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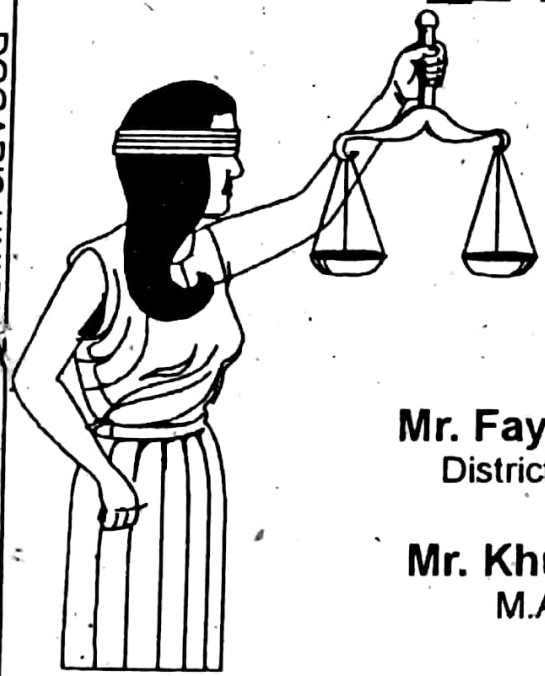
UP-TO-DATE NOTES
QUESTIONS & ANSWERS

CONSTITUTIONAL LAW-I



- British Constitution
- USA Constitution

Mr. Fayyaz Hameed Qureshi
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IMPORTANT EXAMINATION QUESTIONS

PART – I : BRITISH CONSTITUTION

- Discuss the prerogatives of the Crown
- Discuss the sovereignty of parliament and limitations. if any. upon the exercise of such sovereignty
- House of Commons is more powerful than House of Lords. Explain.
- Write a Comprehensive note on the "House of Commons".
- Discuss the composition and role of the House of Lords.
- Write a short note on the Lord Chancellor.
- State the nature and functions of the cabinet in England.
- What are different powers available to Prime Minister of England
- Explain the committee system of English Parliament.
- What are the different kinds of laws which regulate the community of England ?

PART-II : USA CONSTITUTION

- How the American constitution has been developed during the last two centuries (1787. 1987)?.
- What are the salient features of the American Constitution?
- How the cabinet in the USA. Is constituted and also explain its powers?
- Write a Short note on the Vice-President of U.S.A.
- Explain the powers of the Congress in U.S.A
- American Senate is the most powerful chamber on earth. Explain.
- What is composition and function of house of representative in America?
- Discuss different powers available to speaker of House of Representative in U.S.A. and discuss the procedure of his election.
- What do you mean by "Bill of Committee" and "Bill of Calendar"? How are the Bills on Calendar disposed of?
- What do you mean by committee system in the U.S.A. congress and how does it differ from committee system in England?
- Explain the jurisdiction of the US Supreme Court.
- What is position of conventions in English constitution Discuss.

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NEW SYLLABUS

Constitutional Law-I 100 Marks

Course Outline

1) The British Constitution (50 Marks)
2) The Constitution of the USA (50 Marks)

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Principles of British Constitution

1. Salient Features of the British Constitution
2. Nature and Sources of the British Constitution
3. The Rule of Law
4. Parliamentary Supremacy
5. Constitutional Conventions
6. The Crown, Royal Prerogatives, Prime Minister and Cabinet System
7. British Parliament; Composition, Functions and Procedure
8. Privileges of the Parliament
9. Human Rights
10. Judiciary
11. Local Government
12. Political Parities

Constitution of United States

1. Brief History of Conventions leading of the Adoption of American Constitution
2. Important Characteristics / Salient Features

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3. Civil Liberties : Bill of Rights, Due Process of Law, Equal Protection of Laws.
4. Federal System
5. Congress – Composition, Powers and Legislative Procedure
6. Senate and Its role.
7. Separation of Powers – Checks and Balances.
8. President Elections, Powers and Checks on his powers.
9. Judiciary: Its role in
   (i) The Development of Constitution
   (ii) Champion of Civil Liberties
10. Judicial Review – Origin Scope and Limitations.
11. Amendment of the Constitution.

Recommended Books:

1. The Constitutional and Adninistrative Law by Wade and Phillip.
2. The Constitutional and Administrative Law by O'Hood Phillip.
3. Law of the Constitution by A.V. Dicey.
4. The Government of USA by Munro.
5. Understanding the Constitution by Corwin.
6. The Constitution and What it Means Today by Corwin
7. The Supreme Court of United States by Warren.

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CONSTITUTIONAL LAW-I

BRITISH CONSTITUTION

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CONVENTIONS IN THE BRITISH CONSTITUTION

(1). Discuss the role of monarchy in Britain

(A 1995)

(2). Discuss the prerogatives of the Crown

(S 1995),(S 1997),(S 2001),(A 1999),(S 2000)

(3). What are different Privileges available to Crown?

(A 2000)

(4). Evaluate the role of conventions in the development of the British constitution.

(A 2001)

Ans. (1). Introduction:

Conventions are those social customs, traditions, usages and public practices that go in the making of every constitution. They play vital role in the administration of a country. In British Constitution they enjoy a place of pride. It is because the Constitution is unwritten and is totally based on conventions It is the result of gradual growth with the help of conventions. In the words of Prof. Dicey, "Conventions are those maxims or practices which regulate ordinary conduct of the crown, of Ministers and of other persons. Under the constitution are not in strictness law at all ...They are in fact the motive power of the Constitution". According to Edward Burke, "In British administration there is no fundamental difference between law and conventions."

Conventions are the unwritten rules of conduct or public ethics as sacred as law paper but not enforceable in the courts. A large part of the British constitution rests upon these conventions. The constitution without these conventions is unworkable and unrecognisable. In simple words, conventions consist of understandings, customs and usages, which

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determine the procedure, which the person concerned with government, must follow.

(2). Difference between Law and Conventions.:

A distinction must be made between Common Law and conventions.

1). While the law is written, the convention is purely unwritten and untenanted.

2). Conventions are the outcome of regular understanding of the persons who adopt them, whereas laws are clearly made to understand and to apply.

3). The interpretation of conventions and their implication vary from time to time and from person to person; whereas the interpretation of law is more exact and clear because of its written nature.

4). Conventions are the matter of general acceptance whereas the law is to be accepted by those for whom it is meant.

5). A first Act is required to amend, abolish or extend a law already in existence, whereas no such step is required to alter or abolish a particular convention if it proves to be futile.

6). The law may be made to meet a specific aim but the conventions generally have to fulfil broader objects.

(3). Kinds of Conventions.

Conventions are essentially of three kinds:

1). Conventions which ensure a proper harmony between parliament and Executive;

2). Conventions which relate to legislative procedure; and.

3). Conventions securing harmony between government and legislative action on the one hand and the verdict of the electorate on the other.

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Examples of some of these conventions are as follows:

(a). Relating to the king.

1). Bills passed by the parliament of England should be given royal consent.

2). The King appoints the leader of the majority party in the House of Commons as the Prime Minister and after consulting the Prime Minister, other ministers.

3). The King does not preside over the meetings of the Council of Ministers nor participate in ministers.

4). The King always accepts the advice of the Council of Ministers.

(b). Conventions relating to the Parliament.

1). The Parliament comprises two houses---House of Commons and House of Lords.

2). The Parliament should hold at least one session annually.

3). Money Bills are presented only in the House of Commons. House of Lords cannot reject or oppose a money bill.

4). The Speaker of the House of Commons follows the rule, "Once a speaker, always a speaker."

5). The speaker is above politics.

(c). Conventions relating to Cabinet.

1). Council of Ministers is formed out of the Members of Parliament.

2). Council of Ministers is responsible for the actions to the House of Commons individually and collectively. It remains in office so long it enjoys the confidence of the House of Commons.

3). Prime Minister is a member of the House of

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Commons.

4). Council of Ministers can declare or conclude peace treaty after the approval of the House of Commons.

(d). Conventions relating to dominions.

Dominions are almost free in their internal and external affairs.

(4). Sanctions behind Conventions.

In fact, the power behind these conventions is public opinion. Prof. Lowell says that if the Government violates these, the public will oppose them on the next general elections. Thus they must be observed and followed in the administrative affairs. They have become part and parcel of public life and social practices in England. The fear of being punished by impeachment lies at the root of the scrupulous observance of convention for example the impeachment of Darby and Warren Hastings. Prof. Dicey feels that the fear of though once real is now almost absolute. He concedes that the habit of obedience to conventions was originally generated and confirmed by impeachment but no impeachment has taken place for more than two centuries and it is a weapon, which has grown "rusty through disuse". Prof. Dicey propounds the rule of law as the motivation force behind the observance of conventions. He says "....the breach of these conventions will almost immediately bring the offender into conflict with the courts and the laws of the land." It means that the conventions are so bound up with the law that their violation would immediately bring the offender into conflict with the courts and laws of the land.

The conventions are so bound up with the law that their violation would immediately result in the infraction of the law itself and although there is no punishment for the violation of a convention, consequent disobedience of law is punishable offence. If the convention of summoning Parliament once a year is disregarded, the result would be that

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the annual Finance Act or the Army Act would not be passed with the result that the maintenance of the army would be rendered illegal.

Conventions are observed in Lowell's views because:

1) They are a code of honour.

2) They are the rules of the game for the guidance of public men in the field of practical politics of Britain.

3) The fact that one class rules by the sufferance of the whole nation as trustees for the public makes that class exceedingly careful not to violate the understandings on which the trust is held.

4) The conventions are observed because they have taken deep roots into the moral characters of the English people who can never dare to violate them.

BRITISH MONARCH

(1). Discuss the doctrine of supremacy of the parliament under the British Constitution.

(S 1998),(A 1997),(S 2000)

(2). Discuss the sovereignty of parliament under the British constitution.

(S 1996),(A2001)

(3). Discuss the sovereignty of parliament and limitations, if any, upon the exercise of such sovereignty

(A 1998)

Ans. (1). The King and the Crown

Crown means the royal cap that the king wears but today in Britain means the office that is held by the king. The

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gradual establishment of parliamentary control over the king has reduced his status to be a nominal head and all his powers lie with the Crown The king is also a part of the Crown. The entire development of the British Constitution is the story of gradual transfer of the authority from the king as a person to the kingship as an institution. The king continues to wear the crown but the functions of the crown are now exercised by others. The crown is thus an abstract concept and the key stone of the constitutional fabric of England. Sydney Low says that the crown is a convenient working hypothesis More correctly speaking, "Crown is the supreme executive and policy framing agency in the government". According to Gladstone, the distinction between the king and the crown:

The king refers to a person, the term crown to the office of the king. The king is the human occupant for the time being of the throne, the crown is an identical person who signifies the throne and symbolises the state. The king being a human person dies, the crown being an office or institution continues or survives all political vicissitudes. Hence the saying **"The king is dead, long live the king."**

By the 18th century, the king of England had lost most of his powers and his powers were being enjoyed by the crown. The crown is the pivot on which the whole constitution turns. The crown has vast powers. It is the fountain of justice and the chief executive of the realm. It appoints all civil officers, commands the army and navy, makes treaties, pardons criminals, summons and dissolves parliament. These powers of the crown are not enjoyed by the king personally.

The distinction between the king and the crown is that the former is a particular individual such as Henry. George. James. Charles. Edward. He is a person who is born or dies. He may be dethroned or he may abdicate. The crown on the other hand. is an institution. It knows neither birth nor death When we say the king is dead. long live the king. it explains the difference between the crown and the king. The king as a person can die but the crown, being an office or institution can not die. The powers and functions

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of the crown are not suspended even for a moment on account of a king's death. In order to institutionalise the functions of the king, the powers were taken away from the king and transferred to the abstract crown. The crown according to Sydney Low is a "convenient working hypothesis." Actually the crown is the supreme executive authority in the state and embodies a subtle combination of the sovereign ministers and parliament .The word crown embodies the sum total of governmental powers and it is synonymous with the executive.

(2). The Transfer of Powers from the king to the Crown.

The transfer of the powers from the king to the crown has taken place both through statutes and conventions. The personal status of the king has not changed much. He has always been and still is above the law. In constitutional theory, he is still the repository of all powers---executives, legislative and judicial. But these powers no longer belong to the king as a person; they belong to the crown as an institution. The first to be taken away was his judicial powers. The Magna Carta (1215), the petition of Rights (1628)and the Bill of Rights (1689) sought to restrain the king in the exercise of his prerogative powers. Since the Glorious Revolution (1688), the Parliament passed a number of Acts, which not only regulated the working of the institution of the crown but also restrained the monarch in the exercise of his powers.

In comparison to statutes conventions of the constitution have played greater rile in the transference of powers from the king to the Crown. The Queen no longer exercises her prerogatives of appointing her advisers (Minister) summoning, proroguing and dissolving parliament. Conferring peerage, vetoing a bill, granting honours, conducting foreign affairs and dismissing the Government. Therefore the expression, "The King reigns but does not rule". Originally the king had absolute powers, he reigned as well as he ruled But the democracy advanced, the parliament grew

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more assertive, the King slid into the background. With the lapse of time England became a constitutional or limited monarchy. The present position is the King reigns but does not rule. That is though the administration of the country is carried on in the name of the King, the real authority of the kingdom is wielded by the cabinet. Thus the King is reduced in practical parlance to a mere dummy, a figurehead. He is entirely the titular head not the real ruler. He rules in name only. The King is the legal sovereign but not political. The term crown represents the sum total of the Governmental powers.

The King of England who enjoys the powers of the crown as a person gets the throne according to the principle of primogeniture. According to this principle the sons will be preferred to daughters and the elders will be preferred to Youngers. It is according to this principle that Prince Philip has been named as the successor to Queen Elizabeth II. In case the successor is a minor, the institution of Regency acts on behalf of the successor till he attains the age of eighteen years.

(1) **Powers of the Crown** The crown exercises extensive powers. These powers are never exercised by the sovereign himself they are exercised in the King's name by ministers who derived their authority from the parliament and are responsible to parliament for the use they make of these powers. The powers of the crown are derived from two main sources-- Prerogatives and the Statutes. The formal powers of the crown can be classified as under.

1). The Executive Powers

The crown is the chief executive All executive authority is exercised in his name. He is the head of the administration and has to see that the national laws are properly exercised. He appoints the Prime Minister and on his advice appoints other ministers All the higher executive and

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administrative officials are appointed by him. He is the Supreme Commander of all the three forces i.e., the army, the navy and the air force. He can declare war and make peace. He appoints ambassadors and other diplomatic agents. He can send instructions to the British ambassadors abroad and can recall them if necessary. He has the power of conducting international treaties and all foreign negotiations are conducted in his name. All delegates to the International Conference and the UNO are sent in the name of the Crown. Thus the British monarch possesses all the executive powers that is enjoyed by any other head of the state. But he does all this on the advice of the cabinet. The executive orders are issued by the King but they are always countersigned by the Minister concerned. One fundamental and virtually important decision of the king is a well established convention that he will always summon leader of majority party to act as the Prime Minister.

2) The Legislative Powers

The powers of the crown are not exclusively exercised. In the words of Ogg and Zink the crown is not only the custodian of executive powers, it also shares in the work of legislation. There is no doctrine of separation of powers in England. The law making function is vested in the king and in parliament. The king has personally little to do with the business of legislation but the crown plays an important role in it. The Crown summons, prorogues and dissolve the parliament. It can influence legislation through its powers to create new members of House of Lords. The royal accent is essential to the validity of law passed by the parliament. It means that the king may refuse assent to or veto any law passed by the parliament. But the veto power has never been exercised since 1707. The Crown can issue ordinances and proclamations in relation to the crown colonies. In the field of finance, the crown does not have any substantial powers but as representative of the British monarch the Chancellor of

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Exchequer (Finance Minister) prepares and presents the annual expenditure and income of the Government commonly known as Budget. Thus in the financial sphere, it is the parliament which enjoys the real powers.

3). Judicial Powers

The king/Queen is the fountain of justice. The Courts of justice are Her Majesty's courts of justice, the judges are Her majesty's judges. All judgements in the courts are given in her name. She has the power of pardon and reprieve. The function performed by the Queen has been beautifully summarised by Sir Jennings in the following words:

"In many other cases the Queen exercises function, but for the most part they are formed. She is present at Privy Council meetings and when more important kinds of delegated legislation are passed. But in reality, as already stated, she is a mere figurehead, a rubber stamp. With regard to the executive powers of the crown, the Queen makes the appointment of executive and administrative officers of the army, navy and air force on the advice of the Civil Service Commission. By virtue of his judicial prerogatives, he is immune from assist of his person or attachment of his goods. It is principle of common law that the crown is not bound by a statute unless expressly named or implicitly included. All honours and titles flow from the crown. The Crown bestows declaration and titles such as peerage and knighthood etc. and to those who have rendered meri-towns services to the nation or have distinguished themselves on the field of art, science, literature etc. In actual practice on appropriate accessions, every year a list is prepared by the Prime Minister of those whom he like to be honoured.

4). Head of the Church

The king is the head of the established Church o England and all spiritual jurisdictions, superiorities and pre eminence are vested in the king. As head of the Church h

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appoints all archbishops, bishops and other dignitaries and nominates them in case of vacancies. The appointments are made on the advice of the Ministers who ordinarily do not ignore the principle of promotion by seniority. He summons the convocation of the Church and gives his assent to their decisions. Because of the Crown's position in relation to the Church the king is called "Defender of Faith" a title conferred by the pope to Henry V111.

5). Position of the king

The powers of the king are vast and however these powers are not the personal powers of the king. They are the powers of the crown to be exercised by the cabinet in the name of the king. Limited monarchy has made the constitution a democratic one.

(B). Justifications of the institutions of Monarchy.

The king/Queen does not perform any function of his own; then why to keep suh post, which results in the expenditure of a large sum of money every year from the public exchequer. If the king or Queen of England is merely a figure head why the institution of monarchy is not abolished. During the time of Queen Victoria, there was a demand for the abolition of monarch and the setting up of a republic. But at present there is a strong feeling that monarchy should be allowed to continue. Laski has expressed, "Monarchy, to put it bluntly has been sold to democracy as the symbol of itself, and so nearly universal has been the chorus of eulogy which has accompanied the process of the sale that the rare voices of dissent have hardly been heard. It is not without significance that the official newspapers of the Trade Union Congress devote more space of news and pictures, the royal family than does any of its rivals". It is now considered a part of the administration of the country. It is difficult to think of the administrative system of England without the Queen. Sir

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barker writes, "The kingship has survived because our sovereigns have been wise enough to forget past pretensions, to learn new lessons, to change their position with the changing times and to join with their subjects in bringing about changes in other institutions. They stood above party, they watched the nation and they joined with their subjects in bringing about changes when the will of the nation was set for change and only when it was so set."

The institution of monarchy has survived for the following reasons:

1). The inherent conservatism of the English People.

The conservative character of the English men allows them to regulate and modify the character and nature of English monarchy. It warns him doing any thing radical in character or to destroy it. Sir Winston Churchill regarded English kingship as the most deeply founded and dearly cherished by the whole association of English peoples. The popularity and respect that the monarchy commands at the hands of the English people can be best judged from all incident when Lord Allricham who made some remarks against the Queen, was stopped and the man who struck him said, "That's" for insulting Queen.

2). The Queen as a symbol of unity of the English Nation.

Monarchy furnishes a leadership to British society. It lends a comfortable even if merely psychological sense of stability. The Queen supplies the vital element of personal interest in the actual proceedings of the Government. The Queen is not the leader of the party not the representative of a class; she is the chief of the nation. She is every body's Queen.

3). The Queen performs many personal acts

It is she who receives foreign ambassadors, she calls

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upon the leader of the majority party in the House of Commons to form a ministry, she alone can assent to a dissolution of the House of Commons. It is true that the Queen can dissolve the House of Commons only on the advice of the Prime Minister. But still the importance of Queen cannot be ignored because her consent is essential before the plan of dissolution can achieve any success and then she may exert the authority for not dissolving the House of Commons.

4). Queen as mediator of British Politics

The Queen play's the role of an umpire who sees that the game of practical politics in England is played according to the constitutional and democratic rules.

5). Role of Queen in Foreign Affairs

The Queen by her personal influence status and talks with the Heads of other states, determines the politics of world in the best interests of the British nation. The visits of George VI to France and the United States of America helped to strengthen the hands of friendship and alliance between these countries and England

6). Queen as the symbol of Imperial Unity

She is the "golden link of the British Empire". She is a necessary link with the self-governing dominions and holds together all the members of the Commonwealth of Nations. The Queen of England is also the Queen of Canada, Australia, Union of South Africa and dominion countries. The abolition of monarchy would thus mean an automatic disintegration of the whole British Empire.

7). Queen as a Social Figure

The Royal family sets morality, fashion and aptitude even in art and literature. The British people watch and enjoy the actions of the members of the royal family with great keenness.

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8). The Queen and Parliamentary Government.

Parliamentary Government is an impossibility without a titular head. The system of Government has no where proud a workable plan without the pleasure of some titular head of the state whether she be a Queen as in Great Britain or a President as in India. Hence it is in the fitness of things that the offices of Kingship or Queenship must continue in England because it does more good than harm to the British nation.

Prerogatives of the Crown

It has already been pointed out that one of the sources of the powers of the king is the prerogatives of the Crown. According to Dicey, the prerogatives are merely the residue of the discretionary and arbitrary authority, which at any time is legally left in the hands of the Crown. According to Coke prerogatives are those powers, pre-eminences and privileges, which the law gives to the Crown. According to Blackstone, a prerogative is "that pre-eminence which the king hath over and above all other persons, not by virtue of any law, buy out of its ordinary course in right of his royal dignity."

There was a time when the king had a very large number of prerogatives, but their number has lessened in the course of time. Some of these prerogatives have been taken away by Acts of Parliament and others have disappeared because those were not exercised for a long time. However, a particular thing to be noticed regarding the prerogatives of the Crown is that the prerogatives of the king have become the privileges of the people.

The following are some of the important prerogatives of the Crown:

The king is the fountain of justice. All justice is done in the name of the king. It is his duty to maintain the peace of the country. A criminal is punished because he is guilty of violating the peace of the king. The Crown can remit or reduce

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a sentence on the advice of the Home secretary. It also grants special leave to Appeal from courts through out the British Empire to the Judicial Committee of the Privy Council.

Pardons under the prerogative are of three kinds. A free pardon cancels both the sentence and the convection. A commutation or conditional pardon substitutes one form of punishment for another. Usually on the recommendation of the Home Secretary a capital sentence is commuted to imprisonment for life. Remission reduces the amount of a sentence without changing its character. A part of the sentence or fine may be remitted

As regards reprieve or respite, it merely implies the postponement of the carrying out of a sentence. It is largely resorted to in capital cases pending the formal grant of a commutation or conditional pardon.

1) There are certain limitations on the exercise of the prerogative of pardon. One limitation is that the offence must be of a public character and the Crown has no power to remit judgment in suits between subject and subject. Another limitation is that pardon cannot be used as a licence to commit crimes. Still another limitation is that a pardon only relieves from the penalty resulting from criminal proceedings and not from conviction unless a free pardon is granted. It is not certain whether there is any power to sanction a general reprieve for persons convicted of capital murder. This doubt is based on the bill of Rights which provides that the use of dispensing power is illegal. No motion is allowed in the House of Commons if the Home Secretary refuses to recommend a reprieve or pardon while the sentence is pending.

2) The king summons, prorogues and dissolves Parliament. While exercising the power of dissolving the House of Commons the king is required to act according to the will of the nation. The exact

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constitutional position was described in 1923 by Earl of Oxford and Asquith in these words: "The dissolutoin of Parliament is in this country one of the prerogatives of the Crown. It is not a mere feudal survival, but it is a part, and I think a useful part, of our constitutional system, for which there is no counterpart in any other country, such, for instance, as in the United State of America. It does not mean that the Crown should act arbitrarily and without the advice of responsible minister, but it does mean that the Crown is not bound to take the advice of a particular minister to put its subjects to the tumult of a series of general elections so long as it can find other ministers who are prepared to give it a trial." The House of Commons is dissolved only when it is felt that it does not represent the opinion of the country. The king has the right to assent or refuse to assent to the bills passed by Parliament. By means of an Order-in-Council or Letters Patent, The Crown can legislate for certain colonies.

3). The King is the commander in Chief of the armed forces of the country. The Navy is also maintained under the prerogative of the Crown. An annual Act of Parliament legalises the Army, Air Force and the Marines. However, their control, organization and disposition are within the prerogative of the Crown. All officers of the Army and Air Force have their commissions from the king.

4). The king is the sole fountain of honour. He alone can create peers and confer honours and decorations. There is no limit to the number of peers the king can create. That depends upon the circumstances. William IV gave an assurance to Earl Grey that he would create as many peers as were necessary to secure the passage of the Reform Act through the House of Lords. To quote,

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"The king grants permission to Earl Grey and to his Chancellor, Lord Brougham, to create such a number of peers as will be sufficient to ensure the passing of Reform Bill first calling up peer's eldest sons, William R. Windsor, May 17, 1832." However, the power to create peers cannot be exercised by the king indiscriminately In the words of Lord Lyndhurst ,"It does not follow that this or any other exercise of the prerogative, merely because it is strictly legal, is therefore, consistent with the principle of the constitution. The sovereign may, by his prerogative, if it should be thought proper, create 100 peers with discernible qualities in the course of a single day and this would be strictly legal; but everybody must feel and know that such an exercise of the prerogative of the Crown would be a flagrant violation of the principle of the constitution".

5). The king is never an infant, Even when the king is actually an infant the assent given by him to bills passed by Parliament makes them valid. It is presumed that the king is always fit to transact the business of the State.

6). The king is the representative of the people in the international field. He enters into agreements and treaties and no formal sanction of Parliament is necessary.

7). The king receives ambassadors and Ministers from foreign countries.

8). The king never dies. He is immortal. As soon as one king dies, he is succeeded by another. Charles I was hanged in 1649 and he was actually succeeded by his son Charles 11 in 1660, but that year is counted as the eleventh year of the reign of Charles 11.

9). In times of emergency, the Crown can demand

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personal service within the State. The Crown can requisition British ships in territorial waters in times of urgent national necessity and that is not restricted to invasion or imminent danger. According to the right of Angary, the Crown can requisition in times of war any chattels belonging to a national of a neutral state found within the realm. However, compensation has to be paid.

10) The Crown can restrain any person from leaving the realm to evade justice. An absconding debtor can be checked. The Crown can restrain a British subject from leaving the country in times of war. He can also be recalled from abroad.

The king exercises his prerogatives on the advice of the Cabinet and not otherwise. As a matter of fact the prerogatives of the Crown have become the privileges of the people and they are exercised in the interests of the people. It is rightly pointed out that after the Glorious Revolution of 1688 "the Crown was made, the Crown was limited, the Crown was paid".

If there is a dispute as to whether a particular power is to be exercised by virtue of a prerogative or a statute, the matter is to be decided by the courts of law. It is for the latter to decide as to whether a prerogative exists in a particular case or not. However, when the existence and nature of the prerogative has once been established by a court of law, the manner of its exercise cannot be questioned in any court. That can be done only in the British Parliament. The plea of state necessity is not a valid one for an unlawful act. According to Lord Camden. "With respect to the plea of state necessity, a distinction that have been aimed at between state offences and others, the common law does not understand that kind of reasoning nor do our books take notice of any such distinctions". (Entick vs. Carrington).

Many prerogatives of the Crown are at present

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regulated by statute. In the case of Attorney General Vs. Dc Keyser Royal Hotel, the relation ship between prerogative powers and statutory powers was clearly brought out. It was held by the House of Lords in 1929 that as the prerogative had been suspended by a statute, the Crown was not entitled to act under the prerogative. There was no excuse for reverting to prerogative powers when the legislature had given to the Crown statutory powers which covered all that was necessary for the defence of the country. Acts of Parliament can abrogate a prerogative power by express words. If a statute covers the sphere of a prerogative power, it merely suspends its exercise, but does not abrogate it.

The prestige of the Crown is surrounded by "the element of mystic magnificence which resides in its long history and hereditary situation. Its position does not make it a force a-force which can be overcome by a man of strong character, but to which man of some generosity and perhaps some weakness may succumb."

The king can do no wrong

This statement means that the king of England cannot be held responsible for anything done in his name. The reason is obvious. No order of the king is effective unless and until it has been countersigned by some minister. The minister who countersigns the order of the king becomes responsible for it. No wonder, the responsibility of the king finishes

The king can do no wrong because he can authorise no wrong. The king is not the real executive and he has no power to authorise anything. It is the ministers who have real power and authority and they alone are held responsible. It is stated that once upon a time a courtier of Charles II wrote the following lines on the door of the Royal Bed Chamber :-

"Here lies a great and mighty king.

Whose promise none relies on.

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Who never said a foolish thing,

Nor ever did a wise one."

The reply of Charles II was that it was all very true because his sayings were his own, but his acts were the acts of ministers.

Lord Erskine says: "The king can have no conscience which is not the trust of responsible subjects. When he delivers the seals of office to his officers of State, his conscience, as it regards the State, accompanies them. No man in England is less disposed than I am to abridge the king's prerogative, or to degrade the dignity of his high office, by reducing him to a cipher.....but as all man must have errors, the wisdom of our government turns them aside from him. The maxim that the king can do no wrong, does not seek to alter the nature and constitution of things, but to preserve the government not only against the impeachment of crime, but even against the irreverence and loss of dignity arising from the imputation of it. No act of State or government can, therefore, be the king's; he can not act but by advice and he who holds office sanction what is done, from whatever it source may proceed".

The view of Lord Esher is that the king has many prerogatives, "but when translated into action they must be exercised on the advice of a minister responsible to Parliament. This position is fundamental, and differentiates a constitutional monarchy based upon the principles of 1688 from all other forms of government. No one acquainted with the inner working of the constitution can doubt the enormous powers retained and exercised by the sovereign. In the domain of patronage and appointment, naval, military, ecclesiastical and civil, he wields great influence and power. Over foreign policy his personality exercises a sway commensurate with his intimate knowledge of foreign courts and his sustained relations with foreign potentates

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"What then is the king to do if he is asked by his minister to violate the Constitution"?

"The answer is that the sovereign cannot act unconstitutionally, so long as he acts on the advice of a minister, supported by a majority of the House of Commons. Ministerial responsibility is the safeguard of the monarchy. Without, it the Throne could not stand for long, admid the gusts of political conflicts and the storms of political passion".

"In the last resort the king has no opinion. If the constitutional doctrine of ministerial responsibility means anything at all, the king would have to sign his own death warrant, if it were presented to him for signature by a minister commanding a majority in Parliament. If there is any tampering with this fundamental principle; the end of monarchy is in sight".

According to Prime Minister Asquith, "We have now a well established tradition of two hundred years that in the last resort the occupant of the throne accepts and acts upon the advice of his ministers..... If the king were to break that rule, he would, whether he wishes it or not, be dragged into the arena of party politics, and it is no exaggeration to say that the Crown would become the football of contending factions".

The growth of ministerial responsibility has been responsible for taking the king away from the field of party politics. That has added to the popularity of the king. The credit or the discredit goes to the Ministry in power and not to the king.

The legal maxim, "The king is dead, long live the king" shows that a particular king may die, but the throne is never vacant. One king is succeeded by another. This succession is automatic as can be seen from the declaration of king Edward V111 made in the Privy Council soon after the death of his fater. The new king observed: "After the irreparable loss which the British commonwealth has

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sustained by the death of His Majesty, my beloved father, has devolved upon me the duty of sovereignty. I know how much you and all my subjects, with, I hope I may say, the whole world feel for me in my sorrow, and I am confident of the affectionate sympathy which will be extended to my dear mother in her overpowering grief. When my father stood here 26 years ago, he declared that one of the objects in his life would be to uphold constitutional government. Therein I am determined to follow my father's footsteps and work, as he did throughout his life, for the welfare and happiness of my subjects. I place my reliance upon the affection of my people throughout the Empire and upon the wisdom of their Parliaments to support me in this heavy task, and I pray that God will guide me to perform it". The next day, the following Proclamation was made from the balcony of St. Jaines Palace:

"Whereas it pleased Almighty God to call to His Mercy our late Sovereign Lord, King George V of blessed and glorious memory by whose decease the Imperial Crown of Great Britain and Ireland is solely and rightfully come to the High and Mighty Prince Edward Albert Christian George Andrew Patrick David, we therefore , Lords Spiritual and Temporal of this realm being here assisted with these of his late Majesty's Privy Council, with numbers of other principal gentlemen of quality with the Lord Mayor, the Aldermen and Citizens of London, do now hereby and with one voice and consent of tongue and heart publish and proclaim that the High and Mighty Prince Edward Albert Christian George Andrew Patrick David is now, by the death of our late Sovereign of happy memory, become our only lawful and rightful liege king Edward V111 by the Grave of God of Great Britain and Ireland and British Dominions beyond the seas, king and Defender of the Faith, Emperor of India".

"Wherefore we acknowledge all faith and constant obedience with all hearty and humble affection Beseeching God, through whom kings and Queens do reign, to bless the royal king Edward V111 with long and happy years to reign over us".

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SUPREMACY OF PARLIAMENT

- **Distinguish between the king and Crown. What power are enjoyed by the British monarch?**
- **Discuss the powers and position of the king of England.**
- **What is the justification of the institution of monarchy in England?**

(1). What do you understand by "House of Commons"? Explain different privileges to members of House of Commons.

(A1999)

(2). Write a comprehensive note on the committees of House of Commons.

(A 1999)

(3). House of Commons is more powerful than House of Lords. Explain.

(A 2002)

Ans. (1). Introduction

Admittedly, Parliament of England is the Mother of all other Parliaments. Other countries have taken their inspiration from her. The British Parliament itself is the outcome of an evolution extending over many centuries. It began originally as the representative of the nobility, clergymen and the people. By and by, two Houses of Parliament came into existence. The clergymen remained in the House of Lords. The big nobles also remained there, while the smaller ones came to the House of Commons. By and by, the common people got representation in the House of Commons. During the Stuart period, the supporters of Parliament had to wage a war against King Charles I. The king was not only defeated, but also executed. It was not till the Glorious Revolution of 1688 that the supremacy of Parliament was established. The succession

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to the English throne was settled by the Act of Settlement in 1701 . The attempt of George 111 to establish his personal rule failed. The Reform Acts of 1832, 1867, 1884, 1918 and 1928 democratised the House of Commons. The Parliament Act of 1911 established the supremacy of the House of Commons. The people of England rightly take pride in their Parliament.

(2) Sovereignty of parliament

According to Professor Dicey, from a legal point of view, the sovereignty of Parliament is the dominant characteristic of English political institutions. Parliament means the king, the House of Lords and the House of Commons. Parliament thus defined has the right to make or unmake any law whatever. No person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.

According to Sir Edward Coke, the power and jurisdiction of Parliament is so "transcendent and absolute" that it cannot be confined within any bounds. According to Black stone, Parliament has sovereign and uncontrollable authority in the making, confirming, enlarging and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal. It can regulate the succession to the throne. It can alter the established religion of the land. It can change and create afresh even the constitution of the kingdom and of Parliaments themselves. It can do everything which is not naturally impossible.

According to Sir Thomas Erskine May, "The constitution has assigned no limit to the authority of Parliament over matters and persons within its jurisdiction. A law may be unjust and contrary to sound principles of government; but Parliament is not controlled in its discretion and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the power of Parliament

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is so transcendent and absolute, that it cannot be confined either for causes or persons within any bounds:.(Treatise on the Law, Privileges, Proceedings and Usage's of Parliament ,p 28)

According to Sir J.A.R Marriott. "From whatever point of view it be regarded, the English Legislature is the most interesting and the most important in the world. In point of antiquity incomparable, in jurisdiction the most extensive; and in power unlimited. Competent and at all times called upon to legislate for one fourth of the human race, parliament — or more technically the king in parliament—recognises no domestic authority superior to itself. It is in a word, sovereign in all matters ecclesiastical as well as temporal within the dominions of the king".

According to Burleigh England can never be ruined except by a parliament which is omnipotent. According to sir Matthew Hale, as parliament was the highest and greatest court over which none other could have jurisdiction in the kingdom, the people were left without a remedy in the case of misgovernment of the country. According to De Lolme, "It is a fundamental principle with English lawyers that Parliament can do everything buy cannot make a woman a man and a man a woman".

According to De Tocqueville, "In England, the parliament has an acknowledged right to modify the constitution; as therefore, the constitution may undergo perpetual changes, does not in reality exist, the parliament is at once a legislative and a constituent assembly".

Professor Dicey has referred to certain historical examples of parliamentary sovereignty, e.g. Act of Settlement. Act of Union, Septennial Act, Acts of Indemnity, etc. The Act of Settlement of 1701 made fundamental changes in the law of succession of the country. A large number of persons who were otherwise eligible to succeed to English throne, were excluded by an enactment of Parliament. The Septennial Act

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of 1716 extended the life of the existing Parliament which was elected for three years, to seven years. According to Dicey, the peculiarity of the Act was not that it changed the legal duration of Parliament or affected the Triennial Act; what was startling was that an existing Parliament of its own authority prolonged its own legal existence by four years and could have done perpetually.

A sovereign Parliament can adjudge an infant or minor of full age. It can attaint a man of treason after his death. It can naturalise an alien and make him a subject born. It can bastardise a child that by law is legitimate. It can legitimate one that is illegitimate and born before marriage absolutely. Parliament habitually interferes with private rights for public advantage.

A large number of Acts of Indemnity were passed from 1727 to 1828 to free the Dissenters from penalties. Likewise Acts of Indemnity were passed after World War I and World War 11. These Acts legalised what was illegal at the time when the same was done.

There is no other competing legislative authority In the country. The king, both Houses of Parliament, constituencies and law courts have claimed from time to time the right to independent legislative power, but all those claims have been rejected. The Statute of Proclamations of 1539 gave the king of England the power of issuing proclamations having the force of law, but happily that statute was repealed and England was saved from its evil consequences. If that had not happened, the English king would have become as much despotic as the king of Franc. In 1610, a solemn opinion or protest of the judges established the principle that no proclamation of the king could impose upon any man any legal obligation or duty, not imposed by common law or Act of Parliament. The last use of Proclamation was made in 1766 by Lord Chatham.

Likewise, resolutions of either House of Parliament do

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not have the force of law and consequently the Houses cannot act as rivals of the authority of Parliament.

In the same way the authority of Parliament is not affected by the will of the voters. The latter are not entitled to pass laws having the force of law. They can act only through their representatives and not independently of their own accord.

While the Acts of Parliament may override and constantly do over ride the decisions of the judges, the English judges do not claim or exercise any power to repeal a statute. Judicial legislation is subordinate legislation and subject to the supervision of Parliament.

Professor dicey referred to the three alleged legal limitations on the legislative sovereignty of Parliament and held that those limitations were not real. The first alleged limitation was that Parliament could not pass a law opposed to morality. However, it is pointed out that law is law whether it is moral or not. It is law because it is enacted by Parliament. We have to look to the form of law and not its contents.

Another alleged limitation is that Parliament cannot touch the prerogatives. Unfortunately, the real position is that many of the prerogatives have been taken away by Parliamentary enactment.

The third alleged limitation is that a new Parliament cannot touch a law passed by a previous Parliament. However, this is not the case in actual practice. Although the Act of Union of 1800 was passed forever, it was amended from time to time and finally was practically repealed in 1922 when the Eire came to have a separate existence.

After the above discussion, Dicey came to the conclusion that parliamentary sovereignty is an undoubted legal fact. It is complete both on its positive and on its negative side. Parliament can legally legislate on any topic, which is a fit subject for legislation. There is no power, which

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can come into rivalry with the legislative sovereignty of Parliament.

(3). Limitations on Sovereignty of Parliament

1). Dicey pointed out two real limitations on the sovereignty of Parliament, external and internal. The external limitation was due to the possibility of popular resistance, parliament will hesitate to pass laws which are likely to be opposed by the public. The internal check comes from the nature of the sovereign power itself. Parliament, with the history of 18th century before its eyes, will not tax the colonies.

2). According to Leslie Stephen, "The power of legislature is of course strictly limited . It is limited so to speak both from within and from without; from within because the legislature is the product of a certain social condition and determined by whatever determines the society and from without , because the power of imposing laws is dependent upon the instinct of subordination which is itself limited. If a legislature decided that all blue eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; but legislators must go mad before they could pass such a law and subjects be idiotic before they could submit to it.

According to Professor Laski. "No parliament would dare to ------ franchise the Roman Catholics or to prohibit the existence of -------- Unions."

3). In addition to the internal and external limitations pointed out by Dicey, many other restrictions on the sovereignty of British Parliament cannot be ignored. It is true that Parliament can pass a law which is against the rules of international law, but ordinarily while interpreting the statutes, courts proceed on the presumption that Parliament did not intend to violate

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the principles of international law. It was laid down in the case of West Rand Gold Mining Co.vs. The king that "whatever has received the common consent of civilised nations, must have received the assent of our country."

4). The press and public opinion are important checks on the sovereignty of Parliament. No Parliament dare pass any law, which is opposed by the press or the public opinion. It cannot be denied that, ultimately, Parliament has to bow before the verdict of the people.

5). Judicial interpretations also put some check on sovereignty of Parliament. Courts protect against interference with personal liberty, taking away private property without compensation and depriving a subject of the right of access to courts.

6). Leagues and associations formed for political and economic purposes put a limit on the sovereignty of parliament. They have to be consulted by Parliament before passing a measure affecting them. It is impossible to ignore those associations.

7). The sovereignty of parliament has also been limited by the Statute of Westminster, 1931. It is provided in that Act that no act of British Parliament passed after 1931 is to extend to any Dominion unless it is expressly declared in that Act that a Dominion has requested and consented to the same. Every Dominion has been given full liberty to pass any law it pleases even if it is opposed to any law of England. The Union Act of 1935 denies the sovereignty of British Parliament in the Union of South Africa.

The following quotation gives an insight into the real position of Parliament vis-a-vis the colonies; "A National Convention composed of delegates representative of all parties appointed by the colonial legislatures, unanimously prepared a

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draft constitution and the British Parliament had to approve of it in its entirety . A member of the House of Commons drew the attention of the House to a grammatical error and suggested that it should be rectified before the draft Constitution was passed, Sir Henry Campbell-Bannerman, while rejecting the suggestion, observed that faultless grammar was not essential to carrying on a government: that this draft constitution had been framed as a result of negotiations between the British cabinet and the ministers of South Africa, and that they did not reserve to the British Parliament even the right of correcting a grammatical error. The constitution, therefore, recast in the form of an Imperial Bill, was passed through both Houses of the British Parliament just as it was, without the slightest alteration."

8). Another limitation on the Sovereignty of Parliament is the rule of law. It is contended that parliamentary supremacy is tolerable because the rule of law is recognised and if Parliament passes a law which is contrary to the principles of the rule of law, it imperils its own supremacy. Earnest Barker says in "Britain and the British people" that the sovereignty of parliament and rule of law "are not only parallel, they are also inter-connected and mutually inter-dependent. On the one hand the judges uphold and sustain the sovereignty of parliament which is the only maker of law that they recognise (except in so far as law is made in the form of case law, by their own decisions);on the other hand, Parliament up holds and sustains the rule of law and the authority of the judges who are the only interpreters of the law made by Parliament and of the rest of the law of the land .

9). Another limitation on the sovereignty of Parliament is delegated legislation which was not visualised by professor Dicey. Delegated legislation has become a necessity under the prevailing circumstances. The

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Parliament has no time to provide in the law passed by it all the details required for its effective enforcement. Moreover, parliament cannot visualise all the complications that may arise in the process of the enforcement of the law. The Parliament passes skeleton bills and the power of issuing rules and regulations is given to the department concerned. It is estimated that on the average more than 1,200 Rules and Regulations are issued every year. In 1946, their number was 2,287. There is an increase every year. Since sovereignty of Parliament demands that laws must be passed in the Parliament itself, delegated legislation gives the power to make laws to authorities other than the parliament and hence, delegated legislation as such is a limitation on the sovereignty of Parliament.

10). Another limitation on the sovereignty of Parliament is political sovereignty. Parliament cannot act against the wishes of the people. The ultimate rulers of England are the people of England. The voters of England can change the Parliament itself at the time of next elections. A Labour Party pamphlet of 1945 explained political sovereignty in these words; "It really does rest with you. You may complain about the statesmen and politicians. You may criticise Parliament. But you give statesmen power. You elect politicians to Parliament. You determine the membership and thereby the policy of the House of Commons."

HOUSE OF COMMONS

- **Write a Comprehensive note on the "House of Commons". (S 1997)**

Ans. (1). Introduction.

The Parliament of Great Britain is called the mother of Parliaments. When we speak of the British Parliament, we

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mean the House of Commons. However, the House of Lords still exists and despite gradual decline in its powers, the House of Lords are still an important branch of legislative.

The House of Commons is the lower chamber of the British Parliament. It is known as the popular chamber also. It is more powerful and influential than the House of Lords or the upper chamber. For all practical purposes the House of Commons is the British Parliament. In the words of Walpole, "when a minister consults parliament, he infect consults the House of Commons; when the Queen dissolves Parliament, she dissolves the House of Commons. A new Parliament is simply a new House of Commons".

(2). Composition

At present the House of Commons consists of 635 members. There are 516 members for England, 71 for Scotland, 36 for Wales and 12 for Northern Ireland. The country is divided into constituencies and each constituency elects one member.

(3). House of Commons a popularly elected legislative chamber.

It is elected by the people directly. But it was not always so from the medieval days of its origin it consisted of land lords, merchants, guildsmen etc. It was primarily a functional representation and not territorial representation. It continued to be so till 1932. The change came with the extension of parliamentary franchise through the Reforms Acts of 1832 ,67,84,1918,1928. Women were granted the right to vote for the first time in 1918. In 1928 men and women were granted the right to vote on equal terms. At present all persons aged 18 years or above and not subject to any legal incapacity to vote and who are either British subjects or citizens of Irish republic are entitled to be included in the register of electors for the constituency.

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(4). Qualifications of Members.

The members represent country and borough constituencies. Persons who are under 21 years of age clergymen, civil servant, members of the regular armed forces, police men and judicial officers are disqualified from being member of the House of Commons. No English or Scottish peer can be elected to the House of Commons unless he has disclaimed his title for life. At the General Elections 1974 the House of Commons had 635 members.

(5). Term of the House of Commons.

The prerogative power of the Queen to dissolve the House of Commons is intact but by convention the Queen can dissolve the House only on the advice of the Prime Minister. The term of the House of Commons was three years up to 1716; from then upto 1911 it was seven years; the Parliament Act of 1911 fixed it at five years.

(6). The Officers of the House of Commons.

The first duty of the House is to elect the speaker. Among other officers of the House the Chairman of the committee of ways and means, the sergeant at arms, the clerk of the House and the chaplan deserve special mention.

(a). Speaker.

At one time the speaker used to be the king's nominee but since the reign of Charles II the sovereign has ceased to favour this or that person for the office. It is the House, which elects its speaker although the sovereign still approves of speaker's election formally.

(b). The Chairman of the Committee of ways and means.

More usually called as chairman of committees. He has three main functions:

1) To act as Deputy to the Speaker.

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2). To preside over the committee of the whole House.

3). To supervise all private business. There is also a Deputy Chairman.

(a) **The Sergeant of Arms.** He is appointed by the crown to attend upon the speaker to enforce the orders of the House and to execute warrants issued by the crown to assist the speaker.

(b) **The Clerk of the House.** He is appointed by the crown to assist the speaker.

(c) **Chaplan.** He is appointed by the speaker to conduct prayers at the beginning of each session.

(7). Committees of the House of Commons.

The legislative bodies sometime and gain in efficiency by delegating preliminary consideration of bills and other proposals to committees. There are five different types of committees in the House of Commons—.

(i) Committee of the whole House

(ii) Select committees.

(iii) Standing committees.

(iv) Private Bills committees and.

(v) Joint committees

(8). Privileges of Members

These are those rights without which the members cannot discharge their functions. The members enjoy freedom of speech in the House and such freedom is absolute. The House can punish its own member and outsiders for contempt of House.

(9). Powers and Functions of the House of Commons.

1). The House as a Legislature.

All bills to become Acts of Parliament must be passed

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by the House of Commons. In actual practice the House of Commons has lost its law making power to the cabinet. Most Public bills are drafted by the civil servants are presented in the parliament by the cabinet are explained and defended by it. The cabinet than uses its party majority to secure approval of the Commons for all its bills.

2). The House as a Controller of National Purse.

The Powers of the House of Commons over national income and expenditure are absolute. The Parliament Act of 1911 rendered the House of Lords totally powerless in this regard. It is only with the approval of the Commons that taxes can be levied and collected and money can be spent.

3). The House as the Maker of the Government.

It has been frequently said that the principal function of the House of Commons is to make to support and vote out Governments. The Government is composed of ministers all of whom must be members of Parliament. Most of the important ministers including the Prince Minister belong to the House of Commons. They are Ministers because they command the support of a majority the Parliament. On loosing the majority, in the Government must resign. It is why Baghot wrote almost a hundred years ago "The House of Commons lives In a state of perpetual potential choice, at any moment it can choose a ruler as well as dismiss a ruler".

(10). The existing role of the House.

1). Function of supporting the government.

An important function of the House of Commons these days is to provide necessary support to the government to enable to carry through its programme in the Parliament. This function is performed by the majority party in the House because the government belongs to this party. If the government fails to live upto its promises made to the electorate at the time of general election, it shall be taken to be

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the failure of the party in power. Its failure may result in its not winning an election again. The government, therefore, must be supported in the House of Commons by the majority party to enable it to implement the party programme expeditiously and efficiently and also against opposition onslaughts.

2). The Function of Criticism.

Another function of the Commons is to criticise the government. The opposition party or parties perform this function. Payment of a regular salary to the leader of the opposition is illustrative of the importance attached to this function. Week after week the opposition scrutinises minutely every legislative programme and administrative actions of the government for possible weaknesses and then mounts attacks upon them and calls for divisions. The opposition knows that the government will always win a division by making use of its well-disciplined majority. But the sharp and devastating criticism in the House of Commons finds wide publicity among the electorate. The opposition by talking in the House is in fact talking to the country at large and "it is trying to make the Cabinet appear to the public eye either in competent or vicious or if possible both." The opposition may demand a day for a motion of censure to attack the government. The question hour is another device to bring to light failures of government in specific spheres of activity.

3). Function of Education.

The House of Commons though a wide publicity of its debates in press and on radio and television spreads political education among the people.

4). Debating Issues of Political Importance.

The most important function of the Parliament is the debating of various bills and resolutions that are placed before it for approval.

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5). Amendment of the Constitution.

The House of Commons is also vested with vast constitutional powers regarding the amendment of the Constitution. The House of Commons is fully authorised to amend any provision of the Constitution by a simple majority whenever it likes.

6). Redress of Public Grievances.

The House of Commons is also regarded as the final authority to provide relief to the people when they suffer any difficulty or meet injustice from the hands of government officials. An hour is fixed for asking questions on each day, the House meets. The question hour offers opportunity for obtaining any information from the government regareing the policy pursued by it concerning any matter.

(11). Conclusion.

In theory the House of Commons is expected to perform the functions mentioned above. But in practice the Cabinet has now become the master of the house of Commons. The 20th century has witnessed the rise of Cabinet dictatorship. More than 90 percent of the bills are moved by the ministers and these are passed, as the Cabinet desires.

SPEAKER OF THE HOUSE OF COMMONS

Important Questions

- **Discuss the composition and role of the House of Lords.**

(A 1995),(S 1996),(S 1997)

- **Discuss the legislative powers of House of Lords.**

(A 2000)

Ans. (1). Introduction.

The most conspicuous office in the House of Commons is the Speaker. Prof. Dicey says, "no institution

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expresses more faithfully the spirit of the Constitution than the speaker". The speaker of the House of Commons has three basic attributes:

(i) That he is a member of the House;

(ii) That he is elected by the House itself; and

(iii) That he is the House's accredited Spokesman and Chairman of the debates. Without a speaker the house connot meet

(2). Election of the Speaker.

The election of the Speaker is an elaborate ceremony. The House of Commons elect him in its very first sitting, but his appointment is approved by the Queen although the approval is a mere formality. The Speakers is always chosen from the majority party and the person selected always belongs to the back benches of the party to ensure that politically he is a non-controversial man. Efforts are made to secure an agreement between the government and the opposition on the name. Conventions have decreed that the speaker once appointed holds office until he retires from the House of Commons. He is usually elected unopposed at general elections. According to another usually convention, a Speaker as soon as he has been elected divests himself of all his party affiliation and is prevented from advocating the claims of his constituents.

(3). Powers of the Speakers

1). Spokesman of the House,

As Spokesman of the House, he claims the traditional privileges of the House of Commons from the Queen. The Commons have access to the Crown only in the person of the Speaker or in a body with the Speaker at that head. In the name of the Commons, he conveys thanks and censures of the House to the Crown.

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2). Chairman of the House.

As Chairman he presides over the meetings of the House of Commons. He himself does not take part in the debate. He invites members to speak and it is with his permission that the members can address the House. To address the House, members have to catch the Speaker's eye. A new M.P. who wishes to make his maiden speech in the House is given priority over other. He gives equal time to the government and opposition followed by a speech from the opposite side.

3). Functions regarding Discipline and Dignity of the House.

The Speaker has to see that members do not use unparliamentary language. He requests the member to apologize and withdraws his objectionable remarks. If he is not obeyed he can ask the member to withdraw from the House for the remainder to the sitting and orders the expuction of the remarks from the records of the house debates. Should members spread disorder to such an extent as to warrant it, the Speaker can suspend the sitting of the house. When the speaker interviews, all members must be seated and hear him in silence.

4). He interprets the rules of the House.

As Chairman, the Speaker is frequently required to interpret the rules of procedure of the House to decide on points of order raised by the members and to admit various motions. His decision in these respects can not be questioned. He has no vote as a member but as Chairman he has a casting vote in case of tie.

5). The Speaker is the Executive of the House.

As a representative of the House he receives documents addressed to the House and communicates them to the house at his discretion. He is responsible for the printing of

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parliamentary papers and he is also responsible for their delivery to the members. He issues a number of warrants in the name of the House for various purposes.

6). Other Functions.

The Parliament Act of 1911 vests in the speaker the power to decide what is a money bill. He nominates the House of Common's members to the Ecclesiastical Committee. The Minister's of Crown Act 1937 gave the Speaker the power to decide what political party in the House of Commons shall be the official opposition.

(4). His Emoluments.

The Speaker of the House of Commons is paid a handsome salary of (£) 5000 per year and is supplied with a well-furnished official residence free of rent. After his retirement he is given a handsome pension of (£) 4000 per year. Peerage is also granted to him as a mark of honour

(5). His Position.

The Speaker enjoys a unique position in the political system of England. There are various conventions attached to this office. The first is "Once a Speaker, always a Speaker." He is allowed to be returned unopposed to the House. His election to the House is unanimous No political party puts a rival candidate against him. The moment he is elected the Speaker he is supposed to shut off all political affiliations He must become a political neutral. He never expresses an opinion on party issues.

HOUSE OF LORDS

Important Question

- **Write a not on the powers and position of the Lord Chancellor in England.**
- **Write a short note on the Lord Chancellor.**

(A 2002),(S 2001),(A 1997),(S 1996)

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Ans. (1). Composition.

The House of Lords is the Second or Upper Chamber of the British Parliament. Historically it is the oldest legislative chamber in the world. In the words of Shong "It is the only purely hereditary upper house of any importance. Its membership is not fixed. Its members are not elected and with the few exceptions has mostly hereditary members. It is a permanent House, which is never dissolved. At present there are about 1000 members who are called peers. Their number is added from time to time by new creations. The King on the advice of the Prime Minister confers peerage. Members of the House of Lords may be under the following heads:

(a). Princes of Royal Blood.

They by custom do not take part in the proceedings of the House. Generally their number is not more than two or three at a time

(b). Hereditary Peers.

About ninetenth of the total number of members belong to this category.

(c). Scottish Peers.

When in 1907, Scotland was united with England it was agreed that all hereditary peers of Scotland would elect 16 peers from their own number for each Parliament.

(d) By the Act 1800 for the Union of Great Britain and Ireland, the Irish Peers entitled to elect 28 peers for life to represent them in the House of Lords. Since the setting up of the Irish Free State in 1921 no new peers have been elected.

(e). Lords of Appeal.

The House of Lords is the highest Court of Appeal for England. So it is necessary it should always contain a number of eminent judges and lawyers. There are nine law lords who are appointed for life and paid salaries.

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(f). Spiritual Peers.

Two Archbishops and twenty-four senior bishops are the representatives of the Church. They retain their seat in the House of Lords as long as they remain in Church services.

(g). Life Peers.

There are some life peers. These titles are for life and can not be inherited by their descendants.

The Lord Chancellor, who is member of the cabinet, presides over the deliberations of the House. His position is quite different from that of the Speaker of the House of Commons. The quorum i.e., the minimum number of members required for doing business is three; but at least 30 members must be present to pass a legislative measure. The House of Lords is summoned and prorogued together with the House of Commons.

(2). Powers and Functions.

The House of Lords is presided over by the Lords Chancellor who is a member of the Cabinet. The Crown on the advice of the Prime Minister appoints him. He puts motion for vote and announces the result but has no disciplinary powers It is not necessary that he should be a member of the House Although in practice he always is. He presides over the House sitting on a coach known as wool sack. The House meets regularly on Tuesdays, Wednesdays and Thursdays. The sittings last about two hours.

Most of the members never attend the House Absentism is the rule. The quorum of the House is only 3. The freedom of speech in the House is virtually unrestricted because the Lord Chancellor has only limited powers.

The House of Lords is both coordinate branch of Parliament and literally a Court of Law. It is ordinarily described as the highest Court of Appeal. Its powers can be explained under different categories.

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1). Legislative Powers.

The most important function of the British Parliament is to enact laws Bills are introduced and when they are passed by the Parliament and after the King signs them they are known as Acts or Laws An ordinary bill can be introduced in any of the two houses Money bills can be introduced only in the House of Commons An ordinary bill passed by the Lower House i.e. the House of Commons, it is sent to the Upper house i e the house of lords and when passed by it it goes for the Royal assent If the House of Lords refuses to pass an ordinary bill which has been passed by the House of Commons, the bill is sent back to the House of Commons and if the House of Commons passes it again and in between these two passings a period of one year lapses than the consent of the House of Lords is not necessary The bill will become an Act after it has been signed by the king or Queen

On the other hand, if an ordinary bill is introduced in the House of Lords and the House of Commons refuses to pass it, the bill will die To be brief in legislative spheres, the House of Lords is only a delaying Chamber.

2). Financial Powers.

It has already been said that the bill are of two kinds i.e., ordinary and money bill the money bills according to the Parliamentary Act of 1911 can only be introduce in the House of Commons Whether a bill is money bill or not is decided by the Speaker of the House of Commons. When the House of Commons introduces the money bill it comes to the House of Lords The House of Lords whether passed it or not after a passage of one month the bill will go for the Royal assent. Thus in the financial field the powers of the House of Lords are still more less It can delays a passage of the money bill by a period of one month alone

3). Executive Powers.

The Lords have the power to ask questions from the

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Government and have a full right to debate its policies. It also enjoys a share in the Cabinet membership But it may be noted that the Lords have no power to pass a censure against the Ministry. The Prime Minister belongs to the House of Commons, as the Cabinet is collectively responsible to that House alone. Thus the House of Lords control over the executive i.e., insignificant

4). Judicial Powers.

The House of Lords enjoy original power to try peers in case they are involved in any treason against national interest. It is also authorised to hear impeachment which are sent to it by the House of Commons It is the higher Court of appeal in the United Kingdom. So far theory is concerned the ordinary members have the right to attend the meetings of Lords at the time of trial and can decide the judgement by a division of votes but actually they never do so. Its judicial functions are performed only by the Law Lords who are 9 in numbers They may be assisted by other Lords who have held high judicial posts As matter of convention other Lords do not take part when the House sits as a Court.

The powers of the House of Lords as discussed above show that it is not only a Second chamber but also a secondary one The part played by it in the legislative and financial spheres is insignificant It is only a delaying Chamber. It has no authority to remove the Cabinet, which is responsible only to the House of Commons. But the House of Lords still performs some useful service in the revision of bills and debates of Government policy The active members of the House of Lords are generally of vast experience and ability, Ex-Cabinet Ministers, ex-judges, experienced diplomats, former Governor-Generals. Governors and distinguished scholars So the debates of the House of Lords regarding important matters are often of the highest quality and provide a splendid education in public affairs for all who care to read them.

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(3). Arguments for and Against House of Lords.

The existence of the House of Lords has been a subject of heated controversy. From time to time the cry has been raised to mend or end the lords. No other institution in England has been criticised and condemned to such an extent as the House of Lords.

(a). Arguments in favour of the House of Lords:

1) The need for a Second Chamber with full deliberative powers is a well established principle of a democratic Government. The House of Lords usefully does the examination and revision of bills after they have been passed by the House of Commons. The House of Commons is hard pressed for time and the bills are passed hurriedly. The House of Lords revises all the Bills and defects and flaws are thus removed.

2) The House of Lords undertakes legislative work regarding non-controversial matters and this lends a helping hand to the House of Commons. It helps therefore the over burdened popular Chamber which can devote more time to important measures.

3) The House of Lords has been rightly characterised as a ventilating Chamber. It has in it talented persons and seasoned statesmen with diverse experience. Many of them have been trained by long years of experience in the Commons and Foreign service. Discussions in the House of Lords are free and out spoken and reach a higher level than those of the House of Commons Because members of the House have no voters to satisfy and no elections to fight

4) The interposition of delay is needed to crystalise public opinion on all bills before they became Acts. This delay can afford opportunity to the people to have a cool and dispassionate view of the matter. This delay is especially needed in the case of bills which affect the

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fundamentals of the constitution and issues whereon the opinion of the Gentry appears to be almost equally divided.

5). The House of Lords acts as a check against hasty and ill-considered legislation passed by the House of Commons. The House of Commons is elected by the direct vote of the people and is liable to be swayed by popular passion- the house of Lords being conservative in complexion compels sobre second thought.

(b). Arguments against the House of Lords

1). That it is pre-dominantly a hereditary House as such is hopelessly out of keeping with the democratic principles.

2). The House it is said is wedded to the principles and process of a single political party i.e., the conservatives. It has always opposed the Labour Party and its progressive legislation.

3). The meagre attendance which the House attracts and lack of interest which the Lords show in their legislative duties has undermined the prestige of the House. During the session of the House on an average of one third of the members never attend it and another one third attend fewer than ten sittings. Many peers so seldom attend the session that attendants do not even recognise them. Its normal attendance is only 35.

4). The delaying power is a great hindrance in the path of the popular House. Vital and important measures cannot be enacted when there is a need for them. It took about 50 year to introduce Compulsory Primary Education in England.

Inspite of the opposition of the Labour Party the general opinion in England is to contiune with it. The slogan of the Labour Party to abolish it has not succeeded. The

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schemes for the reform of the House of Lords have been suggested by the various political writers.

(c). Bryce proposals of 1918.

(a). The second Chamber should not possess co-equal powers with the House of Commons

(b). The Lords should have no right to make or unmake the ministry

(c). The membership of the House of Lords should consist of 327 members and these members should be elected for 12 years.

(d). Cabinet committees Proposals of 1927.

(a). Membership of the House of Lords should be 350

(b). The Crown can nominate some members for 12 years. One third retiring every four years.

(c) The hereditary peers were to elect some members for 12 years, one third retiring four years.

(d). The House should not amend or reject money bills. But nothing came out of these proposals.

LORD CHANCELLOR

- **Examine the preposition that the cabinet in Britain has become a director.**
- **What are the important features of cabinet system in Great Britain?**
- **How is the British Cabinet formed? Discuss its various functions.**
- **Trace the growth of cabinet system in England.**
- **Describe the Cabinet system under the British constitution.**

(S 1996),(A 2001)

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- **What is composition of English cabinet?**

(S 1999)

- **State the nature and functions of the cabinet in England.**

(A 2002)

Ans. (1). Introduction.

The Lord Chancellor, the occupier of traditional "Wool sack" has a unique position in the British political system. This office is the legacy of the past in Great Britain. In the 11 th century the Lord Chancellor used to be the king's scribe and did his work behind the screen. Cancelle in the king's Chapil. The word Chancellor has taken its roots from the word "Cancelli". But with the passing of time this officer began to be regarded as a trusted adviser of king especially in matters touching the royal grace. With the codification of Law in 1873-76 the whole power of appointing the judicial officers and fixing their positions was handed over into the hands of Lord Chancellor The Lord Chancellor, today, combines in him legislative and executive functions besides judicial functions. He is invariably a member of the British Cabinet and the Privy Council. He is vested with vast powers.

(2). Judicial Powers.

1). Lord Chancellor is the head of the British judiciary. He is the sole authority to make recommendation to the Crown for the appointment of judges to the High Courts.

2). He is the chairman of the judicial Committee of the House of Lords and a member of the Judicial Committee of the Privy Council.

3). Under the provisions of Judicature Act 1925, he controls the organisation of judiciary in the United Kingdom.

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4) He presides over the session of Nine Law Lords when they act as the final Court of Appeal for deciding the judicial cases coming before the House of Lords

5) He is legal adviser of the Cabinet and all legal issues which confront the Cabinet are referred to him.

6) He plays the role of a Chief Judge in the Chancery division of the High Court.

(3). Executive powers.

1) He is member of the British Cabinet.

2) He is the legal adviser to the Queen.

3) He is the incharge of Great Seat. All Government documents pass through his review.

4) He presides over the sessions of the House of Lords, unlike the speaker of the Commons he is allowed to participate in the debates and discussions.

5) The Government measures are often entrusted to him for passage in the House of Lords.

(4). Miscellaneous Powers.

1) He exercises extensive powers with regard to the bestowing of Ecclesiastical patronage upon the Church people.

2) He reads out the King or Queen's speech at the opening of a parliamentary session in the absence of the sovereign.

3) He visits hospital, orphanages, lunatic asylums patronised by the Royal family.

(5). Salary.

The Lord Chancellor draws a handsome salary of (£) 10,000 a year and retires on a pension of (£)5000 per year. His salary is equal to that of the Prime Minister.

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(6). Position.

Lord Chancellor is the greatest dignatory in the British Government. He commands great importance dignity and status in the political set up of Great Britain. According to Prof. Ogg. "To the Lord Chancellor indeed are assigned more tasks than any man can well perform." Though no official department of the Cabinet has been allotted to him. yet Lord Chancellor combines in himself the executive functions of the British Government. He commands a great influence in the meetings of the House of Lords being its Chairman. Unlike the Speaker of the House of Commons. he participates in the debates and discussions of the House of Lords. He does not only preside over the different sessions of the Law Courts but also enjoys the vast powers in the appointment of judges. He is the legal adviser of the Queen

BRITISH CABINET

- **Write a comprehensive note on the British Prime Minister.**

(A 1996)

- **Explain the position of the Prime Minister in Britain.**

(S 1997)

- **What are different powers available to Prime Minister of England.**

(A 1999)

Ans. (A). Growth of cabinet system.

The Cabinet. The cabinet is the core of the British Parliamentary form of Government and is its chief guiding authority. Cabinet has been rightly described as the "glory of the constitution". It is the real executive. Bagehot calls it "a hyphon which joins a buckle", which fastens the legislative part of the state to the executive part. Lowell calls it the keystone of the state to the executive part. According to

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Murray the cabinet is a term recognised by convention to describe the group of ministers chosen by the Prime Minister who are collectively responsible for formulating policy and controlling the departments subject to parliamentary approval. The cabinet although the most important and powerful organ of Government in the state, is not known to law. Its existence like so many political institutions in England is only customary. It is based entirely on conventions. There is no Act of Parliament authorising its formation and no official document constitutes it.

1) Formation of the Cabinet

There are four occasions when a new cabinet is formed. It may be constituted when a new parliament after the expiry of its five years term or on the resignation of the Prime Minister or when the existing cabinet resign on account of vote of no confidence passed against it by the parliament or when the parliament is dissolved before the expiry of its statutory term by the defeated cabinet and new parliament is elected.

The Queen/king invites the leader of the majority party in the House of Commons who then becomes the Prime Minister to form the Government. If no party in the House of Commons commands an absolute majority, the Queen may call upon the leader of any other party who can assure her of a working majority behind him to form a coalition Government. The Prime Minister then proceeds to form the cabinet. He submits a list of his colleagues for the formal approval of the Queen and then an announcement is made to that effect in the gazette. The Prime Minister has not so free a hand in selecting his colleagues as the President of the USA. He must include in his list more important members of his party. In selecting the list of ministers, the Prime Minister is generally influenced by his party affiliations, Service to the nation and integrity of party discipline. It has now become a convention that all the cabinet ministers must be members of either House of British

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Parliament at the time of appointment. If any such person who does not happen to be a member of Parliament but is appointed as the minister, he must get himself elected to either House of Parliament within a period of six months.

2) Growth of Cabinet System in England

The Cabinet is the result of conventions. There is no Act of Parliament or no official document which authorises its formation. The emergence of the Modern British Cabinet is generally associated with the ascendancy of the Whigs under Walpole (1721—42). Before the emergence of the system of cabinet Government in the 18th century, the Privy Council was the chief source of executive power in the state. To begin with the cabinet was a part of the Privy Council and therefore, it has grown out of the latter. Even at the present time if any Minister does not happen to be a member of the Privy Council at the time of cabinet formation, he is appointed to be so. With the passage of time, the membership of the Privy Council increased so much that it became very difficult and inconvenient to hold a meeting of all the members for taking some important decisions. Consequently the Kings just before the reign of Charles I began to consult only those few Councillors who happened to be their favorites. Bacon is the first writer who in his "Essay" stated the use of the word Cabinet for the favorites of the Kings. During the days of Charles II a smaller group of persons known as "Cabal" was consulted for taking important decisions. The Great Council of Norman Kings had grown out of the Cuna Regis (King's Council) The Great Council further gave way for the emergence of the Privy Council. The immediate forerunner of the Cabinet, the so called "Cabal" of Charles II grew out of the Privy Council. The use of the term "cabal" set the tradition for the growth of real Cabinet in England. Then came the Glorious Revolution of 1688 and the consequent increase in the powers of the Parliament. William III on ascending the throne found a minority drawn both from Whings and the

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Tories. But he soon realised that it was impossible to carry out smooth administration with the help of Tories who were critical of his policies. He, therefore, gradually dismised all the Tories from the Ministry and got for the first time, a body of Ministers chosen from one politiclal party. The Whig Junto of 1697, is regarded as the real beginning of the Cabinet system. It was constituted on the principle that all the members should possess the confidence of the dominions party in Parliament. Queen Anne carried the Development a stage further by letting the inner circle decide policy. At the same time she presided in person at the meetings of the Cabinet (the inner circle). George first who succeeded Anne was a dull witted Hanoverian who knew nothing of English political traditions. He neither spoke nor understood the English Language. He abstained from presiding at meetings of his Cabinet and gave this function to one of its important members Sir Robert Walpole who thus became the first Prime Minister in the modern sense. Sir Robert Walpote was a statesman of great imporatance who governed the realm for twety years. He governed the country with the help of the confidence of a majority in the House of Commons. When inspite of his skill and corruption he failed to command a majority (1742) he resigned at once but still retained the full confidence of the King.

3) Emergence of the Cabinet System into the present form

During the long lease of power, Walpole moulded the Cabinet system into the the form which it retains today. He confined the principle that the King having chosen a Prime Minister should leave to this minister the selection of other Ministers. He made himself the sole medium of communication of all important matters between the Ministry and the monarch. Accepting the doctrine that the Cabinet must at all times command the support of a majority in the House of Commons, he instead that he, in turn was entitled to his

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party's support. He demanded that every Whig member should stand behind the Cabinet. Thus by the 18th century all the important features of the Cabinet system like exclusion of the King from Cabinet work, ministerial responsibility, leadership of Prime Minister, cooperation between Cabinet and Parliament, political solidarity etc., were developed and the modern Cabinet began to work, using the powers of the Crown at the pleasure of the Parliament. The system still continues to evolve.

4) Distinction between the Ministry and the Cabinet.

i) Cabinet is the inner circle of the Ministry which is an outer circle. It is a wheel within a wheel. The outside ring consisting of the party that has a majority in the Lower House. The second ring being the Council of Ministers or the minority which contains the men who are most active within a party and the smallest of all being the cabinet consisting of the real leaders and the chief.

ii) The term Ministry conveys a wider sense and meaning than the word cabinet. All such persons who are appointed by the Prime Minister to the imoprtant executive posts like the ministers and Deputy ministers private assistanes and who are bound to resign when the Prime Minister submits his resignation constitute the Ministry in England. On the other hand, the cabinet conists of only those few Minsiters who are appointed by the Prime Minister as the "Heads" of imporant departments of the British Government. In this sense the cabinet is only a part of the Ministry

iii) The meetings of the cabinet are always secret as the important decisions regarding the policy of the Government are taken by it

iv) The total membership of the Ministry exceeds sixty or seventy while the number of cabinet Ministers varies between fifteen and twenty-five. The holders of certain important offices like the Chancellor of Exchequer, First

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Lord of Admirality, Secretaries of State for Home, Foreign Affairs and Common Wealth Affairs etc are generally included in the cabinet

v) The Ministry includes all persons being the incharge of important as well as unimportant departments together with the subordinates and assistants of cabinet ministers who change with the resignation of the party in power. The whole ministry never sits as a body as it is unwieldy but on the other hand, the cabinet meets as a body and forms the entire policy of the British Government

vi) Cabinet is an integral part of the whole ministey. In other words, the cabinet is a smaller circle within a bigger one. It is the committee of the ministry and it consists of senior ministry.

(B). Composition and Powers of the cabinet.

1) Introduction.

England adopted a parliamentary system of government. The King/Queen is the nominal head of the executive and the cabinet is the real executive. It is a body of royal advisors chosen by the Prime Minister in the name of the crown with the tacit approval of the House of Commons.

2) Composition

The cabinet is the driving force of the administration. At the end of the general elections the King or Queen sends for the leader of the party which commands a majority in the House of Commons and appoints him to form his ministry. Normally the Prime Minister consults the most important members of his party regarding the selection of cabinet members. He then submits the list of the ministers to the King or Queen who formally approves it and then the cabint personnel is announced in the gazette. There are four occasions when a new cabinet is formed. It may be constituted when a new Parliament after the expiry of the five years term

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or on the resignation of the Prime Minister or when the existing cabinet resigns on account of vote of no-confidence passed against it by the Parliament, or when the Parliament is dessolved before the expiry of its statutory term by the defeated cabinet and new Parliament is elected. All the cabinet ministers must be members of either House of the British Parliament at the time of appointment. If any such person does not happen to be a member of Parliament but is appointed as the minister, he must get himself elected to either House of Parliament within a period of six months.

3) Principal Conventions Governing the Working of the Cabinet System

The Principal conventions governing the working of the cabinet system are as follows.

1) The composition of the cabinet and allocation of work among its members is decided by the Prime Minister who occupies a central position in the format formation on, working and demise of the cabinet.

2) The cabinet is chosen from the majority party in the House of Commons. It is this convention that has solved the problem of how to promote cooperation between the cabinet and Parliament. The convention also rendered British sovereign's power over her cabinet just formed.

3) A government defeated on a major issue in the House of Commons must either resign or ask for a disolution of the House of Commons to seek a fresh mandate from the people. This established the principle that in Great Britain the ultimate sovereign are the people.

4) A government defeated at the polls must resign immediately.

5) All ministers hae collective responsibility to the House of Commons. The whole government stands or fails

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together.

4) **Functions of the Cabinet**

The functions of the cabinet have never been defined constitutionally. It being a body created by convention the functional role has also been determined by conventions.

(1). Executive Functions.

i) **Formulation of the Policy of the Government.** The cabinet formulates the external and domestic policies of the government in the light of the declared policies of the political party to which it belongs.

ii) **Planning for the Future.** The cabinet is also responsible for planning for the future. The stat being a going concern, it is the responsibility of each government to formulate policies by keeping in view the future needs of the nation. Considerations that may weigh with the cabinet in planning policy for the future are defence and security needs, energy requirments, needs to develop technological know how and the appplication in agro industrial production, likely changes in population pattern and their socioeconomic implicatins.

iii) **To coordinate the working of various departments.** The cabinet coordinates the working of various departments. Normally several departments are involves in the formulation and implimentation of a policy, whether it is the policy of raising the school leaving age, providing old age pension, free medical service, freezing the wages or raising the bank rate. The cabinet acts as the coordinator between various dpartments.

iv) **General Supervesion and Control.** The cabinat is the general policy framing, supervising and controlling body with very little time at its disposal to go into the

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details of every policy. Hence individual ministers have considerable freedom of action in matters which are not of real political importance. It is the duty of the ministers to consult the cabinet. Certain matters are however, never discussed in the cabinet. These are the exercise of the prerogative of Mercy, the personnel of the cabinet, the making of appointments, the conferment of Honours.

(2). Control over the National Finance.

The annual budget statment occupies a peculiar position. Although it is presented to the Parliament in the name of the cabinet, its principles or full proposals are neither circulated among cabinet cabinet members nor debated by them. It is disclosed to the cabinet orally a few days before it is presented in the House of Commons.

(3). Legislative Functions.

In the early days the cabinet derived its importance mainly from the executive functions. But for the last hunddred years, the cabinet has had so much to do with legislation that it seems to have become its principal function. The cabinet prepares the address of the throne in which the cabinet sets forth its legislative programme at the opening of every Parliamentary sessions. More than 95 percent of the bills passed by the Parliament are Government Bills prepared in the ministeries. They are introduced, explained and defended in the Parliament by the ministers and with the support of the Party members the cabinet gets them passed. As the cabinet enjoys the support of the majorty in the House of Commons every bill introduced by it is easily passed. That is why it is said that now-a-days, it is the cabinet that legislates with the advice and consent of the Parliament.

The foregoing survey indicates that the cabinet exercises immensely large powers to every sphere. It is not only the real executive but has also assumed the role of 'little'

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or mini legislative. It formulates the policy, enforces the laws, runs the administration makes, important appointments, takes decisions on matters of war and peace, recommends titles to be awarded, prepares budget, initiates legislation and secures it passage. Thus the tasks of modern cabinet are important and has a huge responsibility to cope up within short the entire system of government revolves round the cabinet.

(C). Salient Features of British Cabinet

England has got a Parliamentary government where the king is a nominal and constitutional head of the executive. The real powers are exercised by the Parliament. There are certain essential feautres according to which the cabinet system is being carried on. The important features of the cabinet system of Great Britain are;

i) **Exclusion of the Sovereign.** The principle came to be established by mere accident. George I did not know English and he had no interest in English politics. So he did not attend the cabinet meetings. In his absence some body was to preside over the meetings and that some body became the Prime Minister.

ii) **Close Cooperation between the Cabinet and the Parliamentary majority.** This principle grew gradually. Walpole established this principle when he resigned in 1742 on being defeated in the House of Commons even though he enjoved the confidence of the king. This principle is now maintained in two ways. The first is that cabinet is to reflect the political colour of the majority in parliament. The second principle is that all the members of the cabinet should be members of one or the other House of the Parliament.

iii) **Political Homogeneity.** All the members at the cabinet must belong to the same party. This is necessary for maintaining unity and cohesion. A cabinent whose

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members are divided over fundamentals is sure to fall very soon. Cabinet system works best under the party system when one party forms the government and the other opposition. It can not work satisfactorily under multiple party system where coalition have to be formed and therefore identical approach to most questions is missing.

iv) **Collective Responsibility.** For many years the responsibility of the cabinet was individual and departmental. But Walpole was strongly opposed to the idea of individual responsibility. He impressed upon the colleagues the desirability of collective responsibility Cabinet comes into office as a unit as goes out of the office as a unit. They swim or sink together. No minister can repudiate in Parliament or in public the policies and actions of his colleagues. A member has to resign if he does not see eye to eye with his colleagues. The cabinet is team whose members work together and uphold the action of any minister. All decisions of political immportance are taken by the cabinet as such and not by mimisters.

v) **Leadership of the Prime Minister.** Another characteristic of the Cabinet system is the leadership of the Prime Minister. According to Lord Morby, "Although in cabinet all the ministers stand on equal footing, speak with equal voice and on the rare occasions when a division is taken are counted on the fraternal principle of one man one vote yet the head of the cabinet is the Prime Minsister who occupies a position which so long as it lasts is out of exceptional and peculiar authority. It is the Prime Minister who presides over the meetings of the cabinet. Being the leader of the majority in the House of Commons is responsible for the appointment of his colleagues. His resignation is the resignation of the whole cabinet. H

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is the channel of communication between the Queen and the ministers.

vi) **Secrecy.** The secrecy of the cabinet proceedings is safeguarded by law and convention. The Officials Secret Act. of 1920 forbids the Communication to unauthorised persons of official documents and information with heavy penalties.

To summarise the noteworthy aspects of the British Executive system are that it is dependent for its existence upon the support of the majority in the elected chamber, that it is drawn from one party (except occasionally at times of national crisis) that the position of the Prime Minister gives it solidarity, that neither the cabinet nor the office of Premier was known to the law until the passage of the Ministers of the Crown Act 1937, that the body always known in the law namely the Privy Council to which all Cabinet Ministers past and present belong has no longer any real political significance.

(D). Dictatorship of cabinet.

Ramsay Muir has lamented that the cabinet of Great Britain has become omnipotent a dictator. He wrote that an immense growth in the powers of the cabinet "has to a remarkable extent eliminated the power and prestige of Parliament, robbed its proceedings of significance, made it appear that parliament exists mainly for the purpose of maintaining or of some what ineffectually critising an all but omnipotent cabinet and transferred the main discussion of political issues from parliament to the platform and the press''.

(1) Factors Responsible for the growth of powers of the cabinet

Ramsay Muir thinks that the principal reason for the development is the rise of the party system. The cabinet through the party machine controls the House of Commons

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rather than be controlled by it. It keeps the House under discipline also by the over hanging threat of dissolution. It has virtual control over policies, legislation and national finance. It has full control over the Common's time schedule and leaves it with little time for doing any thing else. The legislative business brought before the House of Commons for approval is so heavy that the House can not adequately examine or evaluate it. The House saves its own position by putting its seal of approval on whatever the cabinet presents before it.

The cabinet has also enhanced its position vis-a-vis the House of Commons by having a solid bloc of about ninety ministers in the House always ready to support the cabinet.

The cabinet also controls more than twenty percent of national production through the supervision over nationalised Industries. All this has made the cabinet omnipotent almost a dictator.

Yet the cabinet system has not lost its democratic character. Harold Laski and others find nothing wrong or antidemocratic in the immense increase in the powers of the cabinet. The main reasons for this are the following:

i) The traditional theory of the sovereignty of parliament had significance only in the context of the contest between the king and parliament for supremacy and when functions of the state were very few i.e., maintenance of law and order and administration of justice. Governments now perform large functions relating social welfare and carrying the state forward in all matters social, economic, technological promoting total welfare of the people. A nautral corollary of this had to be an increase in the functions of the government.

ii) Every government now assumes office after having won the support on the basis of programme of nationa

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development. The electorate has given it a majority in the House of Commons to ensure that it counters no opposition from the Parliament in the implementation of that programme. If the government fails to live up to its promises to the electorate it shalll be the failure of the cabinet and not of Parliament. It is therefore, inherent in the logic of the cabinet system that the cabinet must have initiative not only in the determination of policy but also in legislation and finance. The parliament is there to provide legislative sanctions to cabinet programmes and not to act as a counter poise to cabinet authority. The inefficiency and failures of the Cabinet can be highlighted through interpellations and debates in the parliament and criticisms from public platform. This keeps the cabinet alive to its responsibilities towards the people. But the right to change the cabinet now belongs to the electorate and not to the Parliament. If the cabinet has failed in living up to the expectations of the people, it shall be voted out by the people at the general elections. If governments change through party machinations within the parliament no government will have sufficient stability to render desired service.

By transference of the control over cabinet from this Parliament to the electorate which is a conventional growth as a result of the operation of party system, the cabinet system has in no way lost its democratic basis, it has in fact become more democratic.

(2). Criticism of the working of the cabinet system, civil service thrives behind the cloak of cabinet responsibility.

But what has caused so much concern among people is not the immense increase in cabinet's functions but its incapacity to perform them well and democratically. Ramsay Muir thinks that cabinet has neither the time nor the expertise

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to perform its functions well and hence they are performed by the civil servants in the name of the ministers "Civil service thrives behind the cloak of cabinet responsibility'. Several points have been made out in support of this line of criticism against the working of the cabinet.

1) Ministes are amateurs. The ministers who come to their offices are amateurs and do not have sufficient knowledge of the affairs of the departments they head. When in office, ministers have to spend a lot of their time in attending the meeting of Parliament and the cabinet and their committees, in touring their constituincies and the country in attending social functions etc. They hardly have any time to acquire this expert knowledge even when in office. Hence in ninety nine cases out of hundred that come up before them, they always prefer to act on the advice of their civil servants.

2) **The cabinet procedure is slack.** The cabinet meets only twice a week for a duration of two hours each time. It is a very short periond to make the cabinet functin efficiectly and effictively. Agenda must be very carefully planned, sufficient preliminary work on various items must be done before submission to the cabinet, members must be adequately informed before they come to the cabinet meetings. Such things are seldom done to facilitate well thought out decisions by the cabinet.

3) **No effective use of Experts.** Such matter as defence, economic policy, science and technology have become extremely technical which an amateur like the minister and even his civil servants can not handle efficiently. Hence has been the need of effective use of experts and technicians by the cabinet when it was discussing related matters and formulating policy on them. In the name of cabinet secrecy and responsibility this has

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been shunned for a long time.

4) **Failure to formulate and dirct an effective long range policy.** The cabinet is a policy formulating body. But for some reasons it has proved as unsatisfactory body for consistent and coordinated planning for the future. The reasons are ----

(a). Governments change quite frequently;

(b). The cabinet is too large a body for an efficient policy forming body;

(c). Since the cabinet consists of departmental heads, its policies tend to be mere collection of departmental policies.

5). **No Efficiency in Departmental Coordination.** During the 19th century there used to be only a dozen departments in the government. Today the number of departments has increased many fold and so also the functions of the government.

The cabinet, through its brief meetings and with its members burdened with departmental functions cannot adequately perform the function of bringing about coordination among various departments.

(3). Attenpts made to improve the efficiency of the cabinet.

In the light of the critcism levelled against the functioning of the cabinet, certain attempts have been made to improve its efficiency in the running of the government.

(1). Establisbment of a permanent secretariat

In 1916 Mr. George took the first step in the direction of establishing a permanent cabinet secretariat. Today it is a permant body performing the following functions for the cabinet and its committees:

(a). It circulates cabinet papers consisting of

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concise statements by the departments, memoranda, documents and recommendations as to action on matters coming up for discussion;

(b). Prepares agenda;

(c). Summons persons to attend meetings;

(d). Records the essential points of discusions and the conclusions reached;

(e). Circulates these decisions to the departments concerned ;

(f). Reports periodically on the implementation of decisions and;

(g). Promotes measures to remove friction between the departments.

The cabinet secretariat is also of immense help to the Prime Minister in dealing with and coordinating the work of departments.

(2). The formation of committees containing experts.

In view of the decisions that the cabinet was not making full and continuous use of experts, committees of specialists were appointed from time to time to undertake long term planning in the fields of defence and economic affairs.

A committee of Imperial Defence was appointed in 1904 which during the Second World War was absorbed in the war cabinet. In 1928 Mr. Baldwin appointed a committee for civil research under his own chairmanship. Other bodies appointed to regulate economy. Inpite of so many expert committees the main responsibility for policy formulation has remained that of concerned ministery and on its suggestion that of the cabinet.

(3). A reduction in the size of the cabinet

There have been very small cabinets during war time

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and their members were divested of all departmental duties. The Haldance Committee in 1918 and Mr. L.S. Amery advocated small cabinets with no departmental ministers as members in peace time as well.

(4). Cabinet Committees.

The credit of developing the system of cabinet committees goes to Mr. Atlee who made use both of standing and special committees.

Ministerial Responsibility

The principle of ministerial responsibility has a three-fold application. In the first place, the ministers are responsible to the King. Undoubtedly, it is merely a technical responsibility. The King of England does not possess the power to dismiss a minister in the same way as the president of the U.S.A. can do. The ministers in England remain in power so long as they enjoy the confidence of the House of Commons. If a minister is dismissed by the Government even when he enjoys the confidence of the House of Commons the king is bound to create trouble for himself. It is possible that such an unwise act might create a demand for the abolition of monarchy itself. However, in spite of the impossibility of enforcing the responsibility to the King, the legal function of that responsibility remains.

Secondly, the ministers are responsible to one another. Every minister consults his colleagues before taking any action which can be the object of criticism. The defeat of one minister may bring about the fall of the whole Ministry.

In the third place, ministers are responsible to the House of Commons. This is the real meaning of ministerial responsibility. It is true that there is no legal obligation for a ministry to resign when it is defeated in the House of Commons but such is a convention. It is to be noted that responsibility is not to both Houses of Parliament but to the House of Commons alone. The usefulness of ministerial

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responsibility can be stated thus: There is no more valuable safeguard against mal-administration, no more effective method bringing the searchlight of criticism to bear on the action or inaction of the executive Government and its subordinates" Sir Oliver Franks says "Even in war, when the executive was to strong, the reality of parliamentary control was an impretive fact. It was exercised through visits and letters from members of parliament., parliamentary questions and the investigations of the select Committee on National Expenditure and of the Public Accounts Committee. No matter what the state of the war or the urgency of business the drafting of replies to letters or parliamentary questions or of memoranda at the request of one or other committee was given a considerable degree of priority. High standards of thoroughness and accuracy were observed and a considerable amount of the time of many officials was diverted from their ordinary work. The influence of these manifestations of parliamentary control went far beyond the particular subjects on which inquiries or investigations were made. It amounted to a continous element of disciline in the minds of officials. The knowledge that any hesitation might become the subject of parliamentary scrutiny gradually sank into the minds of temporary civil servants until it became as habitual to them as to their permanent colleagues. It made neccessary the keeping of records of what was done, in detail otherwise unnecessary. But more important it made an official in the moment of decision almost automatically ask himself how he could justify it in Parliament if called upon directly or through his superiors.

The great power which the House of Commons has over the Government is that the Minister who makes the decision has to come to the Dispatch Box and explain his reasons. He can then be questioned by members, praised criticised or attacked. A motion of censure on his decision can be "tabled' by the Opposition and, by convention, has to be debated as soon as possible. The Minister represents a large

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Department of many Civil Servants, who cannot be questioned about their conduct by Parliament on matters of policy, but the Minister can. He is responsible for alll the acts of his Department, even if he had no knowledge of some of them. The people of a village want to have a post office but the officials at the ministey are opposed to it. The Member in whose consuituency the village lies is asked to raise the matter in the House. He puts down a question and the post Master-General asks his officials for the details of the controversy. If they have made a seroius mistake and have put the Minister in the wrong, he must take the responsibility. He can issue a severe reprimand to the officials privately. However, in the eyes of the House of Commons, he is the man responsible. Any attempt to shuffle off this responsibility on to his Civil Servants would infuriate the House of Common. The Civil Servants who are incompetent or who place the Minister in an impossible position can be persuaded to resign or are removed to positions of less importance but it must be made absolutely clear that it is the Minister who is responsible to House of Commons for the errors of his officials.

Ministerial responsibility means that for every act or neglect of his department, a Minster is responsible. No minister can shield himself by blaming his official. "It would be new and dangerous constitutional doctrine if Ministers of the Crown could excuse the failure of their policies by turning upon the experts whose advice they have taken or upon the agents whom they have employed."

In 1954, a public inquiry was ordered by the Minister of Agriculture and Fisheries to inquire into the circumstances leading to the disposal of land which was not required for the purpose for which it had been acquired by the State. The inquiry disclosed that a number of civil servants were involved and there was a lot of public criticism. There was a debate in the House of Commons and the Home Secretary reaffirmed that a civil servant was wholly and directly responsible to his

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Minister and could be dismissed by him at any time. It is true that the power was seldom used but the power was nonetheless there. It was also declared on that occasion that a Minister must protect a civil savant who has carried out his order explicitly.

BRITISH PRIME MINISTER

Important Question

- **Explain the committee system of English Parliament.**

(A 2001)

Ans. (A). Appointment, Functions and position of the British Prime Minister.

Ans.1. Introduction.

The cabinet is the real ruler of Britain and the Prime Minister is a key man in it. In the words of Morley. "The Prime Minister is the key stone of the Cabinet Arch". The Prime Minister is central to the life and death of the cabinet. It is round his figure that a ministry is formed and his death or resignation brings about an automatic fall of the cabinet. He thus creates, keeps and destroys the cabinet.

The institution of Prime Ministership is the result of a convention. Till the passage of the Ministers of the Crown Act 1937, the position of the Prime Minister was not legally recognised.

(2). Appointment of the Prime Minister.

The Prime Minister is appointed by the King/Queen. This means, he is choice of the Queen who normally chooses as prime minister the recognized leader of the party having the majority of seats in the House of Commons. We can also say the choice of the Prime Minister is automatic. The person who is the leader of the majority party in the House of Commons is invited by the Queen to become the Peime Minister and form

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the Government. But sometime the choice of the Prime Minister can present complication. Complications arise when the Prime Minister dies in office or he resigns for personal reasons and the majority party has no recognised leader. In that case the Queen has an absolute right to consult and summon any one she pleases.

(3). Powers and Functions

i) Leadership of the Cabinet.

The Prime Minister is the moon round which the stars revolve. If the cabinet is the engine of the ship of the state, the Prime Minister is its driver. He forms the ministry. He appoints ministers and assigns portfolios them. He can not ignore prominent member of his party. He can also dismiss the ministers with the approval of the Queen. He is the chairman of the cabinet and presides over its meetings. In case the cabinet does not yield to his wishes he may even threaten them with his own resignation which means the collapse of the whole cabinet.

ii) He is the Leader of the house of Commons.

The Prime Minister is the leader of the House of Commons. Sir Jennings writes, "All roads in the constitution leads to the Prime Minister. From the Prime Minister leads in the Queen, Parliament , the ministers and other members of the common wealth even the Church of England and the courts of law". All important announcements regarding major issues of governmental policy are made by him in th House. In all political battles he represents the cabinet . He is the chief spokesman of the government and bears the burden of debates from the government benches. As a leader of the House he has the power to correct the errors in the statements issued by his colleagues. All questions with regard to critical issues are always addressed to him. He speaks the final official word in the Parliament. Thus the Prime Minister guides and influences all the regulations of the House of Commons in England.

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iii) **Principal Adviser of the Sovereign.**

The Prime Minister is the mouth piece of the cabinet. It is he who conveys the views and decisions of the cabinet to the Queen and conveys the Queen's messages to the cabinet. Thus he is a link between the cabinet and the Queen. He is the Queen's chief adviser. He can recommend to the Queen as dissolution of the House of Commons if he wishes to put the governments policy to the country before the normal time for a general election has come. He advises the Queen to summon, prorogue, dissolve Parliament.

iv) **Determination of Foreign Policy.**

The foreign affairs are close concern of the Prime Minister. He shapes and determines the external policy of England with other states of the world. He can exchange public messages with the ministers of other countries. Even when he does not hold the foreign affairs portfolio, he can actually participate in the shaping of policy and conduct of foreign affairs.

v) **Link between Cabinet and Parliament.**

The British Prime Minister is also the main link between the cabinet and the Parliament. He represents the ministers as a whole in the Parliament because all important statements and declarations of policy are made by the Prime Minister. It is due to this fact that under a system of joint and collective responsibility, an attack of the parliament against any individual Minster is regarded by the Prime Minister as an attack against the whole cabinet. The only alternative in that case, for the Prime Minster is either to defend the minister for each attack or to resign on behalf of the cabinet.

vi) **Power of Dissolution of the House of Commons.**

The Prime Minister is the only person who is authorized to advise the Queen for dissolving the House of Commons and order general elections to ascertain the gener

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will of the electorate on important national and international issues. Though legally, the Queen can object the Prime Minister's request for dissolution yet in practice she never objects and simply obeys the decision of the Prime Minister, as "The Queen can do no wrong has become an established maxim of the British constitution". This is a great power in the hands of the British Prime Minister to check the arbitrary action of non-confidence against him.

vii) **Fountain of Honour.**

The Prime Minsiter enjoys vast patronage both in the government and the church. It is on his recommendation that the Queen appoints a number of officials like ambassadors and other domestic representatives governors of colonies etc. It is he who recommends to the Queen for the awards of most civil honour and distinctions.

viii) **Control over Finances.**

The Prime Minister also exercises enough control over the national purse. The budget of the country is prepared by the chancellor of Exchequer (Finance Minister) but he always also informed Prime Minister about the financial affairs.

ix) **Settlement of Departmental Disputes.**

The Prime Minister also exercises controls and settles the disputes which may arise among the various departments. He tries to create spirit of harmony and cooperation among the various organs of the government. He can change the portfolios from one minister to the other as he likes. He also plays the role of an impartial judge and supplies the cementing force in running the administration smoothly.

(4). Position of the Prime Minister.

The Prime Minister enjoys vast powers. He is the nominee of the electorate. He is the head of the cabinet which is the real executive He exercises supreme control over foreign policy. He exercises general supervision over all the

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departments of the state. He is the pivot on which the entire governmental machinery revolves. Political writers have used beautiful phrases to explain his position.

(a) Key stone of the cabinet arch—Morely and Lowell;

(b) The Head of the British constitution—Bagehot;

(c) Political Ruler of England—Marriot. He is the real ruler of the country and that his powers are enormous.

He is the sun round which the planets revolve. But much of the position of the Prime Minister depends upon the personality of the person who occupies the exalted office.

(B). Comparison with the president of United States.

The American President is not only both more or less than a king, he is also both more or less than a Prime Minister. Really speaking he is a king who is his own Prime Minister. Both the Presidint and the Prime Minister are undoubtedly very powerful in thier respective countries providing contrary forms of government. But in certain respects the President is more powerful than the Prime Minister. Whereas in certain other respects, he is comparatively weaker than the Prime Minister.

1) **Legislative Power.**

In the domain of legislative, the President is inferior to the Prime Minister as he neither sits in the Congress nor initiates the bills nor pilots them through the Houses. The Prime Minister on the other hand, controls the legislation in the appointments. A British Prime Minister infect, with a strong and comfortable majority at his back can do almost anything that the American President can. He is not even expected to seek parliamentarian confirmation for treaties made by him with foreign states. They may not even be submitted to the Parliament.

The Prime Minister is fully authorized to declare war

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and conclude peace but in U.S.A. it is the congress which can declare war and conclude peace.

2) **In Financial Field.**

The Prime Minister wields greater authority than the American President. The Chancellor of Exchequer in Great Britain prepare the budget under the general guidance of the Prime Minister who is termed as the first Lord of Treasury. The House accepts the budget with minor modifications as the majority party stands by the cabinet headed by the Prime Minister. In the United States, on the other hand, the national budget is prepared by bureau of the budget under the direction of the President. Since he has not to present the budget himself in the congress whether the budget is going to be passed by the House or not. The congressional committees effect drastic cuts and alterations. Sometimes it appears that budget coming out of the congress ultimately is much different from the one introduced in the congress.

3) **Appointment.**

Strictly speaking the American President is indirectly elected by an electoral college but in reality his, election has almost become direct in actual practice due to strict party discipline. The British Prime Minister is appointed by the king /Queen. Normally he has no choice as he has to call the leader of the majority party in the House of Commons. In fact the general election in the United Kingdom is an election of the Prime Minister out of the two.

4) **Term.**

In the Parliamentary government of Great Britain, the Prime Minister and the other ministers are collectively responsible to the House of Commons. They continue in office as long as they enjoy confidence in the House. They have no fixed term of office. The House of Commons can dismiss them any moment if they lose confidence in the House i.e., if they lose their majority in it. On the other hand, the President

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enjoys a four years fixed term of tenure. He stands outside the congress. He is neither a member of either House of Congress nor is he responsibility to it. Of course, he can be impeached by the congress on ground of violation of constitution and can be thus removed as happened so far only once in the American History in the dismissal of President Johnson.

5) **Source of Powers.**

The powers of the American President are laid down by the constitution. But extent of this powers can be judged by judicial decisions, congressional statutes and conventions. Whereas the powers of the British Prime Minister are the product of convention rather than of statutes.

6) **Conclusion.**

It can therefore, be concluded that while the American President holds the greatest and the highest political office in his country and one of the greatest in the world, the British Prime Minister backed by the majority of the House of Commons is in the words of Ramsay Oliver, "adorned with such plenitude of power that no other constitutional ruler in the world possess not even the President of United States". The American President combining in himself the halo sanctity and glory which generally hovers round the head of the state and the real authority of a head of government is certainly in no way less powerful than the Prime Minister. "The Prime Minister is the key stone of the Cabinet Arch". Critically examine the statement with reference to the powers and position of the British Prime Minister.

KINDS OF BILLS AND LEGISLATIVE PROCEDURE

- **Discuss the growth of Party system in England.**
- **What are the principal features of the British Party system ?**
- **What are the chief characteristics of the British Party**

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system

- **What are the different kinds of laws which regulate the community of England ?**

Ans. (A). Kinds of Bills.

A "Bill" is a draft of a proposed new law. Bills may be broadly divided into Public Bills and Private Bills.

In making laws Parliament has come to accept the leadership of the cabinet. Nevertheless most of the time is taken up by the consideration of Bill introduced by private members or by ministers and passing them into Acts. Parliament has to deal with several types of bills. The main distinction is between public bills and private bills.

A public bill is one of a general character and effects the country and the people as a whole. For instance a bill proposing changes in income tax rules or in the qualifications of the voters is a public bill. A private bill on the other hand, is one which concerns a particular locality or a particular section of people in society. A bill permitting a local body to borrow money with a view to improving the water supply of a town or authorizing the construction of a tramway line is a private bill. A public bill authorizing the government to raise or spend money is called a money bill or financial bill. All money bills are introduced by the ministers. A public bill other than a money bill may be introduced either by a minister or a private member. If moved by the private member, it is called a private member's bill. A private member's bill must not be confused with a private bill. Government bill, money bill and private member's bill are all public bills.

If a public bill is introduced in the Parliament by a minister it is designated as government bill and if introduced by any other member of Parliament it is called a private member's bill. The money bill is always introduced by the Chancellor of Exchequer or any other member of the cabinet in the absence of the Chancellor of Exchequer.

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Private Bill deals with the matters of local importance instead of general importance. It is introduced not by the government but by an individual member of British Parliament in his personal capacity with or without support. The main stages through which every Public Bill before it becomes a law, has to pass may be explained as under.

A public bill may originate in either House of parliament. We assume here that the bill is presented first in the House of commons and later sent up to the House of Lords

(B). Legislative Procedure.

1) Introduction and First Reading.

The introduction of every Bill whether by the Government or by a private member is to be followed by a notice in advance. The submissive of notice brings a particular Bill on the Agenda or the Order of the Day. On the appointed day the speaker asks the sponsor of the Bill to place the Bill (a dummy containing its title) on his table. Then it is read out loudly by the clerk of the House. There is no debate or no voting. This finishes the First Reading. The Bill is automatically ordered to be printed and publication shortly follows. It is then placed on the proper calendars to wait its turn for the discussion of the Chamber.

2) Second Reading

The Second Reading is the most crucial stage in the life of a Bill in the British system. This is the main occasion for the discussion of the Bill. On a day fixed in advance by an order of the House, the introducer of the Bill stands and moves that it be now read for a second time. It is at this stage that the "battle between the friends and foes of measure really begins". The introducer of the Bill explains, elaborates, elucidates and defends the Bill. A leading member of the opposition follows the minister in charge of the Bill criticises and attacks it and ends usually by a hostile amendment "that the Bill' be read second time this day six months hence or he

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may propose a substantive amendment to the policy embodied in the Bill. Debates take place on the principles of the Bill. There is no detailed clause by clause discussion at this stage. After the debate is ended, the notice is put to vote. The defeat of the government bill is tantamount to a vote of no confidence against the cabinet and it must resign or ask the King/Queen to dissolve parliament and call for a new election. The party in power, therefore, use all its resources to see that the Bill gets a comfortable majority and support.

3) **The Committee Stage**

After the Second Reading the Committee's stage begins. In the Committee the Bill is discussed clause by clause and line by line. It is at this stage that the final decisions regarding the exact shape of the Bill are made. The Committee can, if necessary propose amendments to improve the Bill. After discussion, the recommendations of the Committee are drafted in the form of a report and it is submitted to the House.

4) **Report Stage**

When the Committee stage is over the bill enters the Report stage. The Bill is now submitted to the full House with the speaker in chair showing what the Committee has done to it. The Report of the Committee is discussed in detail and even the principles of the Bill may be debated again especially when the Bill is of controversial nature. Thus the Report stage gives to the House an opportunity for retouching the principles of the Bill. At this stage the members have the last opportunity of altering the Bill. Fresh amendments can be made and inserted.

5) **Third Reading**

Then comes the last stage. Although the fate of the Bill is pretty well certain by that time, yet the opposition can make another attack on the Bill. The debate at this stage is again only on the principles and no detailed discussion can take place. The entire Bill is put and there is no doubt that the

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measure would be adopted by the House. The Bill has been passed but only in one House. It may be noted that every time a debate is commenced or concluded, the mover of the Bill who is supposed to be piloting it makes as speech either explaining the measure or replying to the criticisms. He remains in charge of the Bill till it is passed.

6) **In the Second House (House of Lords)**

If the Bill is passed in the House of its origin it is sent to the other House where it also passes through all the above stated stage. If it is passed by the Lords in the same form it is sent for the Royal assent. In case both the House of Parliament fail to agree an effort is made to bring a compromise by exchange of written message between Committees representing the two Houses. Failing an agreement, the House of Commons under the Amendment Act of 1949 may decide to repass the Bill at two successive sessions. With an interval of at least one year between the first and final passage and in such a case, the Bill would be sent for an assent of the Queen. not withstanding the non-concurrence of the Huoes of Lords.

7) **Royal Assent**

The Queen may give her assent in person. Now-a-days Royal assent is given by Commission on behalf of the Queen. The Royal assent has not been refused to a Bill which has been passed by the two Houses of the Parliament since 1707.

With the assent of the Queen the Bill becomes a final law of the land and is then published in the Official Gazette of the Government known as the State Book.

BRITISH COMMITTEE SYSTEM

(1). The Committee System.

The Committee system means referring legislative measures to a number of Committees for mature deliberation, and speedy disposal. Much of the work of the House is done through the Committees. Members of the Parliament have

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neither the time nor the special knowledge to discuss the details of all Bills that come before the House. The Committee of the House of Commons are of five main types :

1) The Committee of the whole House.
2) Select Committees on Public Bills.
3) Sessional Committees on Public Bills.
4) Standing Committees on Public Bills.
5) Committees on Private Bills.

1) The Committee of the whole House.

It consists of all the members of the House of Commons. The Chairman of the Committee chosen in the beginning of each parliament presides over the meetings and the speaker. The members of parliament are allowed to speak any number of times on the same question. No chance motion can be moved. When the work of the Committee is finished the Chairman leaves chair and the Speaker resumes his duty.

2) Select Committees on Public Bills.

These Committees are appointed to consider and report on specific measures which involve some new principles. As a rule a Select Committee consists of fifteen members. These are created from time to time and come to an end when their purpose is fulfilled. A Select Committee is more or less composed of technical experts fully familiar with the details of proposition referreed to. The Selection Committee selects its own Chairman. The Committee has the power to collect evidence, examine witnesses and in other ways obtain necessary information and report it to the House. The select Committees are also called Adhoc Committees.

3) Standing Committees.

Standing Committees are of recent origin. Not until 1882 these Committees were known to the House. The rules permit as many such Committees as business requires. The

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number has varied from two in the beginning to six. Recently there have been five ordinarily known as A,B,C,D and E. All the Standing Committees are appointed at the opening of the first session of a new Parliament and last till the Parliament is prorogued. Each Standing Committee consists of twenty regular members. But for the consideration of any particular bill another twenty to thirty members can be added to its membership. The Chairman of the Standing Committee is appointed by the Speaker out of a panel of Chairman. There is special Standing Committee known as Scottish Grand Committee which consists of all the members from Scotland to whom are added ten to fifteen members in order to reflect this composition of the House. This discusses the bills relating exclusively to scotland.

4) **Private Bills Committees.**

Private Bills Committees are appointed to deal with the Committee stage of Private Bills. They are of two kinds.

1) The Committee for unopposed Bills consisting of the Chairman of Way and Means, Deputy Chairman and Four other members selected from a panel appointed by the Committee Selection.

2) The Committee for opposed bills usually known as "Private Bill Group" consisting of a Chairman and three members are nominated by the Committee of Selection. Members must debate that they have no personal and local interest in the bill.

(2). **Joint Committees.**

From the middle of 19th century joint Committees have been used regularly on non-political matters of equal concern to both House e.g., Statute Law Reform and Private bills involving on important matter of principle. A Joint Committee consists of a small Select Committee of each House sitting together. The number of members from each House is equal and the Chairman is usually a peer. Each part

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reports to its own House.

The Committees play a very important part in legislation. They save the time of the Parliament. The other advantage of Committee work has been technically better legislation coupled with a moderation of the crudeness of ready political judgements especially as expected before the electorate.

POLITICAL PARTIES

(1). Nature of Political Party.

Democracy in modern times implies two things- a social purpose and a responsible Government. The first denotes the end and the second the instrument for attaining the end. The formation of representative form of Government raises certain questions.

(a) Who nominates candidates and works for their success in the elections ?

(b) What influences are brought to bear upon voters? And

(c) On what basis the candidates seek support of the people?

All these questions are related to the political parties in the country. A political party is a group of citizens which acts as a political unit and which by the use of voting power aim to control the Government and endeavour to carry out its policies. A political party is different from a faction and a group. Faction get formed around a leader, groups get formed around certain principles but a political party may originate as a group but it is much different in its scope. Political parties are essential for representative Government. In a democracy parties are inevitable. Parties enable men and women having common political views to unite and work together to bring these principles and policies into operation.

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(2). Development of the Party System in British.

For the origin of the party system in England, we have to go back to the reign of Queen Elizabeth. There were Puritans in the Parliament who opposed the prerogatives of the Queen. The Puritans acted as organised party and opposed the granting of monopolies and other measures of the Queen. The despotism of Stuart Kings James I and Charles I made the popular party stronger. In the civil war the two parties—the Government (the Royalists) and the Puritans (popular party) found themselves opposed to each other in the battlefield. The suppporters of the King were known as Cavalliers and the members of the popular party were known as Roundheads.

(3). Tories and Whigs.

The first political parties emerged in England in the form of Tories and Whigs. The term Tories applied to those who had leanings towards the Roman Catholic Church and were royalists in sympathy. The Whigs were those English politicains who were inclined to support Parliament against the King. They pressed for the liberties of the people. After the Glorious Revolution political parties developed markedly.

(4). Parties in the Nineteenth Century.

Before the Reform Act of 1832 Political parties had no organisation among the people. The real change came with the Reforms Act 1832. It enfranchised the middle class. In the latter half of the 19th century the two parties changed their names. The Whig gave way to liberal and the name Tory yielded to Conservative. The Liberal party became very strong under the leadership of W.E. Gladstone. The Conservative Party grew in strengh under the leadership of Benjamin Disraeli. With the emergence of the working class the Labour Party came into existence (1906). At first this party was federation of so many socialist associations and Trade unions. The Party since then has grown in great strength mainly at the expense of the Liberal Party.

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(5). Characteristies of the British party System

1) Two Party System.

The British Party system has been a two party system. first to come were the Whigs and Tories, next the Liberals and the Conservatives and then the Conservatives and the Labour. USA has also a two party system but this cannot be said of other democratic countries. The two party system has given Great Britain the benefit of political stability and orderly change. There are many advantages of the two party system. It gives stability to the Government. The two party sytstem fixes up political responsibility quite clearly. The party in power is made squarly responsible for the determination and implementation of policies. The party in opposition stands for sustained but constructive criticism. Again the two party system is a truly democratic system. The electorate can make a clear choice between the two parties.

2) High degree of centralisation.

Another characteristic of the British party system is a high degree of centralisation. The parties there are organised and function on this basis. The parties have evolved a high degree of leadership and the readiness of spreadout mass of members to follow a comparetively few leaders in policy, tactics, the choice of representatives and ministers. There is no gulf between the leaders and the ordinary members. They are linked with each other through various levels of leadership.

3) Continuity of Operation.

The parties in England do not go into slumber as soon as elections are over. They maintain a continuous operation of educating the electorate. They publish party journals and other literature, organise schools, hold public meetings and participate in local Government elections.

4) Fellowship, unity and discipline in the party.

Membership of parties in Great Britain is voluntary.

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People have deep loyalty for the party to which they belong. Defection from one party to another is never heard of. The political parties are more disciplined in Great Britain than their American counterparts. Each party has behind it a long history and philosophy. Each party has its own constitution. The party fellowship and cahracter bind the members together.

5) **Importance of the Leader.**

The party leader enjoys a position of esteem and authority. Leaders like Gladstone and Disraeli have contributed to the building up of strong, centralised national parties.

6) **Class Character.**

The class character of the British Political parties is also quite evident. The Conservative Party gets its membership and its votes mainly from the landed aristocracy, the new class of the owners of business and Industry and the middle class. The Labour Party gets its support from working class and their trade unions. The Liberal party had got its support from the then emerging class of business and indutey.

The organisation, aims and objects of main Political parties in England.

In Britain the two principal political parties are the Labour and the Conservative, the two lesser ones are the Liberal Party and the Communist party.

1) **The Labour Party.**

The Party was set up in 1906. Until 1918 this party was only a federation of local organisations and Trade unions. In 1918 a new constitution adopted by the party transformed it into a national party. The principal components of this party are the socialist intellectuals, the Fabian Society, the Trade unions, Co-opertive Societies.

The Labour Party has a very complicated organisation. The basic unit is called the constituency. Then there is the

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Regional Council. The annual party conference is attended by large number of delegates drawn from the affiliated organisations. It has a National Executive Committee consisting of 28 members. The leader of the party is elected by the Parliamentary Labour Party for a year but it is customary to re-elect him. The party has a permanent Head office. It deals with party finance, Research, international affairs, women's organisations, Press and Publicity. The Head Office has eleven regional offices.

(2). The Conservative Party.

It is one of the oldest parties. It grew out of the 18th Century Tories. The name Conservative Party began to be used from 1831. It is the party of the traditional landed aristocracy, the gentry or the upper class. The party bitterly opposed extension of political rights, economic fair shares and the education of the lower middle and working classes, It stood for the retention of the Britain's Imperial possesions while the Labour took first steps in the direction of its liquidation.

Orgainsation

1. **Consituency Association.**

The party has an association in each Constituency. It is divided into wards and polling destricts. Its functions are to raise election funds and to recruit members.

2. **Area Council.**

Constituency Associations are linked on a Provincial level into twelve areas with an Area Council for each. Their functions are to co-ordinate the resources of the area and to organize the party on the area level.

3. The General Council of the National Union.

It consists of the leader and the officers of the party members of the Parliamentary party, all adopted candidates and four represntatives from each Constituencies.. It has about

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5500 members of whom not more than 3500 attend Although theoritically the governing body at the national level, it is in practice too large to carry out important executive functions. It is, therefore more of a deliberative and approving body.

3. The Executive Committee of the National Union.

This comprises about 150 members mainly from the areas but includes the leader and other principal officers. It performs the functions of the Central Council between the letter's meeting and recommends to the Central Council the names of the officers of the national unoin for the coming year.

4. The Leader.

The Leader is elected by the Conservative M.P's but this has to be confirmed at the party meeting of M.P.'s prospective candedates, peers and Constituency Association Representatives. He continues until he lays down his office.

5. The Central Office.

It is permanent Headquarters of the party and was estabilished in 1870 by Disraeli. The office is incharge of party revenues. It conducts research and studies on public issues and supplies literature to party members for their education. It co-ordinates the preparation, resources and workers for election campaigns.

6. The Annual Party Conference.

The Annual Party Conference is attended by the members of the Central Council together with constituency agents and three representatives from each constituency. Delegates put forward resolutions which are debated by the conference.

(3). The Liberal party.

For the whole of 18th and 19th centuries and a good part of the 20th , the Liberal Party was one of Great Britain'

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two main parties. In its origin it was a Whig party of the 18th century and came to by known as Liberal Party in the middle of 19th century. It was the principal instrument of bringing about numerous changes in the British political and constitutional system. It widened Parliamentary franchise, cutdown the powers of the House of Lords and the Monarchy, removed religion disabilities, freed the press, instituted free trade, established free and compulsory education and gave Trade Unions to operate freely.

The Liberal Party started losing its position soon after World War I both to the Conservative and Labour Party. The Liberals lost heavily in terms of seats but not in terms of vote. Liberals stand for individual freedom and liberty. It aims to built Parliament on more democratic lines by introducing the principle of proportional representation. Now it is a party in between the two major parties—The Conservative and the Labour.

There are some other minor parties too beside the main Conservative and Labour and traditional Liberal.

(4). The Communist Party.

The party follows the tenant of Karl Marx and is considerably under the influence of the Communist Party of USSR. The Party takes as its guiding principle the conception Marx brilliantly brought friction in Soviet Russia that the organised working class is the only force with the ability and will necessary to end capitalist rule and establish the new Socialist Society. The party has ardent faith in Socialism and its programmes programme is of action rather than of pursuasion. It advocaes state control of banks, big industries, the mines, transport etc, without compensation. It has no belief in democratic methods. Class struggle is inevitable and it can be fought by force only. It is a revolutionary party with iron discipline. It has failed to have substantial following in the country.

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(5). The British Union of Fascists and National Socialists.

It was established in 1932. It got inspiration from Italy and Germany of pre war days. Its objective is to establish totalitarian state.

(6). The Independent Labour Party.

Infact it is the parent to the present Labour Party. Its objective is estabilishment of a socialist common wealth. It has faith in Parliamentary methods. It collaborates with the Labour Party. It is infact a group.

According to Lord Balfour the differences between the British political parties are real but not fundamental. Infect the Conservatives, the Labourites and the Liberals are in basic agreement on many issues.

Q. What are the different kinds of laws which regulate the community of England?

Ans. The British judicial system is famous for its excellence and impartiality. Justice is administered promptly and nobody is deprived of his rights and liberties without a proper and impartial trial in a court of law.

There are three kinds of laws in England and they are:

The Common Law.

The Common Law is neither made by the king nor enacted by the Parliament. It is not written. It is simply a collection of usage's and customs as interpreted by the judges. After the Norman Conquest, an attempt was made in the 12th century to centralise the judicial system. Judges were sent by the king to different places and they tried cases in Local Courts in accordance with the customs of those places. They developed a law which became common for the whole country. Thus came into existence the Common Law entirely based on usages and customs.

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Equity.

The Common Law was based on usages and customs whereas the basis of Equity was conscience. In olden days, when people could not get justice they appealed to the King. Such cases were referred to the Court of Chancery and the judges of this court decided the cases according to precedents, traditions and maxims. Thus grew out of the decisions of the judges of Chancery, the Law of Equity. Equity was meant to remove the defects of the common law and provide remedies where the Common Law had no remedy. Equity deals with certain type of civil cases and has nothing to do with criminal cases.

Statute Law.

Statute Law is either made by the king or enacted by the Parliament. In earlier times, when the king was all powerful, such laws were made by him. But later when his powers diminished, Parliament began to enact these laws and now it is the Parliament which alone can enact laws. The king merely gives his formal assent.

Statute Law also removes the defects of the Common Law. It can enlarge the Common Law, after any rule of the Common Law and whenever the Common Law comes into conflict with the Statute Law, the latter prevails.

BRITISH JUDICIAL SYSTEM

Main Features of the Judicial System in England:

(1). There is no single form of judicial organisation throughout the country. The law of Scotland differs both in principle and procedure from that obtaining in England and Wales. Northern Ireland has still another system though it has greater kinship with the English.

(2) Rule of law is another important feature of the English system of justice. It is the sheet anchor of English

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justice now as before. This means that no person can be punished unless his guilt is proved in a court of law and no distinction is made between the official and non-official. All persons—private citizens and government servants, rich or poor, high or low are all subject to the same law and are tried in the ordinary courts of the land.

(3). The division of the legal profession of England into two classes of lawyers—Barristers and solicitors is another important feature of the judicial system. A solicitor prepares a case for the trial . He can not plead in a higher court of law. He secures the services of a barrister for this purpose. He can however argue the case in the lower courts. A barrister is a specialist in pleading cases.

(4). Courts in England have no powers of judicial review. As Parliament is sovereign, it is beyond the competence of the courts to declare a law as it has emerged out of the anvil of Parliament though contrary to law, morals or the provisions of the great charters.

(4). The jury system in England is the significant expression of the rule of law and independence of judges came later. It is the established practice of the judicial system of England that there must be a jury in serious criminal cases. The verdict of the jury in favour of the accused can not be reviewed at the instance of the prosecution.

(6). The great merit of the judicial system is the independence, promptness and impartiality with which justice is administered. Justice delayed is justice denied is the maxim in England. The judges jealously guard the liberty of the citizens. The English judges possess great discretion in dealing with technicalities The rules of procedure are quite simple and logical.

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(2). Organization of Courts in England.

The courts in England are divided into two branches: The Civil Courts and the Criminal Courts. Civil Courts deal with private law or disputes between one citizen and another. Criminal Courts deal with branches of public law. At the lower level, the separation is most rigidly maintained but the House of Lords, which is the Highest Court of Appeal, has both civil and criminal powers.

(1). Civil Courts.

(a). County Courts. At the bottom of Civil Courts is the County Court. The whole country is divided in about 500 counties and each county has a court. County Court tries cases involving claims of not more than £200. The counties are grouped in 70 Circuits and there is generally one judge in each Circuit.

(b). The High Court of Justice. The High Court of Justice, also known as the Supreme Court of Judicature, is divided into three divisions

i) Queen's Bench Division,

ii) Chancery Division, and

iii) Probate, Divorce and Admiralty Division.

Cases which cannot be tried by County Courtys or cases which are brought to a Central Court directly by the litigant are tried by one of the three branches of the High Court of Justice. All the three Divisions of the High Court of justice have both original and appellate jurisdiction.

The Queen's Bench Division deals with ordinary civil cases. The Chancery deals with cases of Equity and the Probate, Divorce and Admiralty Division deals with cases of marriages, will and ships.

(c). The Court of Appeal. Appeals from County Courts and the three Divisions of the High Court of Justice lie

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with the Court of Appeal. The Court of Appeal consists of 5 Lord justices of Appeal, the 3 Presidents of the three Divisions of the High Court of justice and some other judges. The Lords Chancellor is the President of the Court of Appeal.

(d). The House of Lords. At the highest level is the House of Lords which is the Highest Court of Appeal in the country. As the Highest Court of Appeal, the House of Lords consists of the Lord Chacellor,who is the President, six Law Lords and some other peers who have held judicial posts.

(2). The Crimenal Courts:

(a) Justice of peace and Stipendiary Magistrate. At the lowest level of the Criminal Courts are the justice of Peace and Stipendiary Magistrate. A justice of Peace is competent to try petty offences and cannot award a sentence of more than 14 days imprisonment or a fine of more than 20 shillings. The judicial functions are performed by Stipendiary Magistrates in big cities.

(b) Court of Petty Session. Next to the justice of Peace and the Stipendiary Magistrate are the Courts of Petty Session. These Courts try such cases in which jury is not used. Besides, they investigate such cases which are to be referred to a higher court for a jury trial. The Courts of Petty Session can award a maximum of six months imprisonment or a fine of £50.

(c) Court of Quater Session. Courts of Quarter Session try cases referred to them by a Court of Petty Sssion. This Court consists of all the justices of Peace in a County. All the justices may or may not participate in a session of this Court but two justices are necessary to constitute the quorum. Cases involving death sentences or other very serious cases are not heard by this court.

(d) Assizes. These courts try criminal cases and other

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serious offences. Cases in these courts are heard by a judge and a jury. The President of this Court is a judge of the High Court.

(e) **Court of Criminal Appeal.** Appeals from the Quarter Sessions and Assizes lie with the Court of Criminal Appeal. This court consists of the Lord Chief justice and the judges of the Queen's Bench. Generally, three judges hear the appeal.

(f) **Judicial Committee of the Privy Council.** It reviews cases referred to it by various British colonies. In fact, it does not decide cases, but gives advice to the king. It consists of the Lord Chancellor, the former Lord Chancellor, Law Lords, Law President of the Privy Council.

Q. How is the Local Government organised in England?

Ans. Local Autonomy:

Local autonomy existed in England long before the Norman conquest. For purpose of Local Government, England and Wales were divided into two counties. These counties are further divided into boroughs, urban districts and rural districts which are again subdivided into parishes. Parishes are the lowest units in British local government. An area in the county which has received a municipal charter, is known as borough. There are more than three boroughs in England. When the population in a borough exceeds fifty thousand, it is called a county borough. London has a special government of its own. The description of these local areas is as under.

The County:

It is the largest and most important area of Local Self Government. The Local Government Act of 1888 created 62 administrative counties. The administration of the counties is run by an elected council consisting of a chairmen, Alderman

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and Councillors. All Councillors are elected as a body every three years by the local electors themselves. They are elected for six years and half of them retire every three years. The Councillors and Aldermen choose a Chairman who presides over the County Council. The Chairman is paid for his services.

The County Council has wide administrative functions. It supervises the work of the rural districts within its jurisdiction. It is responsible for the maintenance of main roads and bridges, asylums, reformatories, industrial schools etc. It is also responsible for organising elementary education in the rural districts. It regulates matters regarding health, police, fire services and old age pensions. Policy decisions are made by the Council but detailed administrative work is done by paid officers. The most important of these officers, are a clerk, the treasurer, the education officer, the medical officer, the fire officer etc.

The County Borough:

An important city in the county is called a county borough and has its own council. County Boroughs are normally above 50,000 in population. There are about 8 county boroughs in England and Wales. The Council of a County Borough consists of a mayor, aldermen and councillors. It is an all purpose authority. It provides all municipal services to the citizens of the County Borough. The County cannot interfere in its affairs.

The Borough:

The borough is a special unit of local government which is simply a town with a municipal character. There is no difference between a county borough and a borough except that a County has right to interfere in the affairs of a borough. A borough council, like the county borough council, consists of a mayor, aldermen and councillors. It has particular functions allotted to it by Acts of Parliament. The main

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functions of the borough council are to frame the budget, to levy rate, to control borough property, to make laws concerning streets, police, health, traffic controls etc.

The District:

The rest of the country, apart from boroughs and county boroughs, is divided into districts. The Districts are of two types: Urban and Rural Districts. Urban Districts are thickly populated areas which are created by the County Council with a view to enable the areas to get better water supply, adequate fire protection and improved sanitation. An urban District may in time become a borough. As a district it has no charter but certain special powers over sanitation, housing, licensing and other matters of particular importance. There is Urban District Council consisting of councillors elected by the municipal voters and Chairman chosen by the councillors. There are no aldermen in the District Council. There are about 563 Urban District Councils.

The Rural district is a group of old rural parishes. There are in England and Wales six hundred and sixty three rural districts in all. Each District has a council consisting of elected councillors and a chairman. The council is responsible for matters like sanitation, water supply and public health. It has the power to levy rate and set up Committee. It also appoints permanent salaried officials to carry on routine administrative work.

Parish:

Parish constitutes the smallest unit in the scheme of Local Government in England. It is a sub-division of the rural district where the population of parish is less than 300, the local affairs such as property, sanitation, public libraries etc. are managed by the entire population meeting together for this purpose. But if the population of the parish is more than 300, a Council elected by the voters for three years, consisting of five to fifteen persons, is entrusted with this task.

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London has always had special problems of its own and it has evolved its own unique form of local government. There is one Corporation which governs the city. The city of London is an area of about one square mile located in the heart of London. It is primarily a business and financial centre. The civic, head of the city of London is known as Lord Mayor. The Corporation which is made up of freemen of city governs through a mayor and three councils or courts, namely, the court of alderman; the court of common council and the court of common hall. The court of common council consists of 206 councillors, 26 aldermen and lord mayor. The aldermen and councillors are elected directly by the citizens of the city. The councilors are elected annually whereas the aldermen are elected for life. The seniormost among the aldermen becomes the Lord Mayor. The court of common hall is, in fact, a primary assembly of the free men and municipal officers, and charged with duties of an elective nature only. The Court of common council is the really important governing authority which carries its administrative work through standing committee and permanent officials.

There is one London County Council also which covers an area of square miles and is divided into 28 metropolitan boroughs each with its own council. The London County Council consists of 124 councillors and 20 aldermen. The London Council deals with education, the larger housing schemes, certain public health matters etc. It is the sole authority with respect to local sanitation and severage, the removal of refuse, the provision of libraries, baths and public wash houses, street lighting fire protection, tunnels, ferries and bridges..

THE CIVIL SERVICES

Ans. (1). Introduction.

The civil services are the life-blood of administration and constitute the administrative machinery of the state. They

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consist of permanent administrative officers, executive officers and subordinate services. Cabinets may come and go but these permanent officials remain in service. They are above party polities and are people of long experience.

(2). Organisation of Civil Services.

The Civil Services are divided into three main branches. These are:

i) **The Administrative Services.**

This is the top service in England. Permanent Secretaries, Deputy Secretaries, Assistant Secretaries, Principals and Assistant Principals, belong to this class. Recruitment to this service is made through open competition and only University graduates with first class or high second-class degrees are allowed to compete. The officers of this class advise ministers on general policies of government, help them to perform all Parliamentary functions and in practice run the administration of their respective departments.

ii) **The Executive Services.**

Below the Administrative class is the Executive class. Recruitment to this service is made partly through competitive examination from men and women between the ages of 18 and 19 and partly by promotion from clerks. The work of this class covers a wide field and requires in different degrees, qualities of judgment, initiative and resourcefulness.

iii) **The Subordinate Services.**

Recruitment to this service is made through competitive examinations from men and women between 16 and 17 years of age. Persons having passed the School Certificate Examination are eligible to compete. Typists etc. are also promoted to this class. This is a working class of the administrative section of the service.

Beside the above three, there exists one more class of service and that is the Typing class. The main work of the persons belonging to this class is typing official documents, letters etc.

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Professional class consists of Architects, Engineers, Scientists, Lawyers, Professors etc. Their recruitments are made on merit.

(3). Functions of Civil Servants.

These functions may be described as follows:

(1). Administrative Service:

i) Formation of policy, co-ordination and improvement of Government machinery,

ii) General control and administration of the departments,

iii) Issuing of instructions and directions for the execution of policy.

(2). Executive Service:

i) Internal control and orgainsation,

ii) Execution of policies,

iii) Conduct examinations of lesser importance,

iv) Make preliminary enquiries, and

v) Issue directions to subordinates.

(3). Subordinate Service:

i) Collection of material and data,

ii) Simple drafting and precise work,

iii) Checking and re-checking of accounts,

iv) To verify claims and returns

v) Other general work as may be assigned

RULE OF LAW

- **Discuss the Rule of Law in its present context. (S 1995).**
- **What do you understand by Rule of Law? (S 1996)**
- **What do you means by term "Rule of Law" ?**
- **Discuss its significance under the British Constitution. (A 1999)**
- **What do you understand by Rule of Law and whether**

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there are some exceptions to it under British System.

(S 1999)

(1). Introduction

Rule of Law means the supremacy or dominacce of law. The rule of law in England is the outcome of centuries of developnment. It means government according to the laws against government according to whims of men. According to Prof. Dicey though there is no separate Act in England to guarantee the fundamental rights of the citizens as is the case in U.S.A. yet the british citizens enjoy maximum liberty due to the Rule of Law. Rule of Law is a negation of the rule of man or a group. The very root of English law depends upon the Rule of Law.

The rule of law has been recognised by the scholars even before it was systematically dealt with. Sometimes the term is synonymous with the maintenance of the law and order.

Dicey has given three phased meaning of the Rule of Law. He says that the Rule of Law which forms a fundamental principle of the constitution has three meanings or may be regarded from three different points of views. In the first place the absolute supremacy of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative or even of wide discremationary authority on the part of the government. English men are ruled by law and by the law alone. A man can be punished for breach of law but he can not be punished for any thing else.

It means, again, equiality before the law or the equal subjectoin of all classes to the ordinary law of land administered by the ordinary law courts. The rule of law in this sense excludes the idea of any exemption of offcials or other from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals. There can be nothing really corresponding to the "administrative law".

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The Rule of Law lastly may be used as a formula for expressing the fact that with us the law of the constitution, the rules in the foreign countries naturally form part of a constitutional code are not the source but the consequence of the rights of individuals as defined and enforced by the courts. Rule of law is one of the unique characteristics of the English constitution. It means that it is the law of England that rules the country and not the arbitrary will of any individual. Law is supreme over all.

Some of the writers are of the opinion that the Rule of Law protects the rights of the people in better way than does the administrative law. They argue that as administrative courts are composed of officials, they will naturally favour a government servant who has committed an illegal act. In this way an aggrieved private citizen can not expect justice from these courts. They believe that this system is undemocratic and encourages the executive to the irresponsible and high handed. Critics point out that to allow officials to perform judicial functions is to deprive citizens of one of the most effective safeguards of their liberty.

On the other hand, there are some writers who believe that the French people have better protection of their rights under the administrative law. According to them the procedure adopted in French Administrative courts is simple and least expensive. Cases are decided very promptly. If it is proved that the citizen has suffered at the hands of a public servant while discharging his official duty, he can realise compensation from the government which under the Rule of Law, a decree against a public official of a heavy sum would mean nothing to the injured person for the official would never be able to pay it. The administrative tribunal in France possesses traditions of impartiality and the law which is administered is mainly case law. This law effectively safeguards the rights of the people.

Prof. Dicey has dealt with the concept of Rule of Law at length and has given three distinct though kindred

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interpretations of the famous Rule of Law.

(1). In the first placed it means that, "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts". This means that no person may be arbitrarily deprived of his life, liberty or property; no one may be arrested and detained except for a definite brach of law which must be proved in a court of law. Cases are tried in open courts to which public has free access. There can neither be any illegal imprisonment nor illegal punishment.

(2). In the second place, it means that, "no man is above law but that every man whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals. What is law, legal right and legal obligation for me must hold equally as such for all citizens". This also means, there is equality of every citizen irrespective of his official or social status before law. And that there is only one kind of law in England to which all Englishmen are amenable. Dicey in elaborating the principle of equality before law says, "With us every official, from the Prime Minister to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen".

(3). The third meaning at the term "Rule of Law" is that the rules of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts. Prof. Dicey put great emphases on the rule of law in England. He glorified in the fact that the rule of law established the equality of all citizens before the courts of law. It was in his view, conducive to liberties of the English men.

(2). Exceptions or Limitations to the Rule of Law.

Since Dicey explained the concept of the rule of law, many changes came over the world and even in Britain, a country which can boast of the rule of law, the concept had to face the challenge of the changing times and admits certain

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clear limitations to the rule of law. Not only this, even Dicey had admitted in his, "Law of Constitution' that rule of law is eclipsing. Exceptions to the rule of law are as under

a) The Queen is not amenable to any court of law. She is above law. She is immune from all civil and criminal traits.

b) The Public Authorities Protection Act of 1893 gives special protection to officials. The proceedings against government servants must be started within six months otherwise it becomes time barred. If the proceedings against a government servant fails, the plaintiff has to pay very heavy costs.

c) Foreign rulers and diplomats enjoy immunity before courts of law. They can not be tried even if they violate a law of the country.

d) Judges are immune from personal responsibility for any official act even if they are beyond their jurisdiction but not knowingly.

e) The Public Order Act 1916 given the police the power to regulate or prohibit public meetings and processions. It can also declare drilling and wearing of unauthorized uniforms as illegal.

f) During emergency the government may partially suspend the rule of law.

g) The Minister of Health, the National Health Insurance Commissioner, the Ministry of Education, the board of Trade, the Minister of Transport, the Railway Rates Tribunal decide questions affecting the persons and property of the citizens.

There is thus a considerable distribution of administrative power and therefore, Dicey's Rule of Law is in practice considerably modified.

(3). Conclusion.

The Rule of Law still remains a principle of the English constitution but it needs reinstating in the light of present conditions.

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UP-TO-DATE NOTES

CONSTITUTIONAL LAW-I

USA CONSTITUTION

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EVOLUTION OF THE US CONSTITUTION

- **Briefly Describe the constitutional history of USA.**

(Supply 1995)

- **How the American constitution has been developed during the last two centuries (1787, 1987)?**

(Annual 1997)

- **Outline the development of the U.S constitution.**

(Annual 2001)

Ans. **(1). History of the Constitution**

The United States of America has been characterised as a great melting pot. The long ways of immigration that began in the early years of the 17th century reached its peak in 1890. The first colonist to go to the New World were familiar with English political concepts and institutions. They were also the first to draw up a written agreement the so called May Flower Compact (1620) that bound the colonists into a civil body politic. This historic document signed on the ship itself marked the beginning of a constitutional Government in the United States. During the next 150 years these English institutions and ideas with a few modifications permeated the whole of the continent. The new nation for a long period was part of the British Empire. It was in July 1776, that the American declared a war against British Crown. Originally USA consisted of 13 colonies inhabited largely by English immigrants. The colonies were of three types the Royal Colonies, Proprietary Colonies and the Chartered Colonies. Despite some minor, differences the political framework of the various colonies, colonial Governments moved gradually towards a uniform political pattern. The constitutional pattern was divided into three divisions.

i) The Colonial Legislature,

ii) The Colonial Governor and

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iii) The Colonial judicial system.

(2). Declaration of Independence July 4, 1776.

The colonists worked English institution in their new homes as best as they could. Their most cherished legacy was the English Common law that guaranteed some basic rights to the subjects. Such rights and liberties even the King dared not destroy. Ultimately it was the conflict regarding these rights that kindled the spirit of nationalism and independence among the colonists. By the middle of the 18th century the conflict between the Governor and the Representatives of colonies had assumed a serious form. There were disagreements over taxation, defence, authority of royal judges and enforcement of laws. Trade Acts required colonies to export sugar, tobacco and coffee only to Great Britain, import woollen and hardware from Britain only. The policies of George III proved disastrous for England. After seven years of War (1756-63) the British Government wanted the colonies, to pay a portion of the cost of the war fought to defend them. The British Parliament which did not contain a single representative of the colonies had no right to impose taxes on the colonies. The Americans struck to the principle, "No taxation without representation". In 1770, there was a clash between the colonists and the troops. Many colonists were killed in this clash. There ensued a regular war between the rebellious colonists and England. A Congress of representatives of the states was convened at Philadelphia in 1775. George Washington was appointed the Commander in Chief of the Army. The French promised help and the 13 colonies proclaimed war against England. On July 4, 1776 the declaration of independence was published. Many men paid with their lives for the freedom that was finally won in 1783. The colonies as a consequence of declaration were declared independent and absolutely free. They were absorbed from owing allegiance to the Crown. The 13 American Colonies became an independent nation-the United States of America.

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they were called.

(3). Nature of the American Confederation.

The main provisions of the constitution of 1781 (the articles of Confederation) were as follows:

i) **Still of the Confederacy.** The still of this confederacy shall be the United States of America a name which has continued ever since.

ii) **Sovereignty Freedom and Independence of the States.** Each state retains its sovereignty, freedom and independence and every power jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled. It was thus a loose federation of the states which jealously guarded their individual entity.

iii) **Purpose of the Confederation.** The purposes for which the states had agreed to unite were-common defence, the security of their liberties and their mutual and general welfare.

iv) **Constitutional Agency of the Central Government.** A Congress composed of the delegates of the states was established for the management of the general interests. No person could be a delegate for more than 3 years. The Presiding officer called president possessed almost no executive authority.

v) **Powers granted to Congress.** The Congress was granted the power to make war and peace, to settle all disputes and differences between the states, to coin money and regulate the currency etc.

vi) **Privileges of the Citizens.** The free citizens of each of the states were entitled to all privileges and immunities of free citizens.

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(a) Right to move freely

(b) Carry on trade

(c) To acquire, own and dispose of property.

(4). Weaknesses of the Confederation.

The confederation was not empowered with sufficient authority to cope with the problems of an emergent nature. Its weaknesses were.

1). It was a mere consultative and advisory body.

2). The President of the Congress possessed no executive authority.

3). There was lack of Federal judiciary.

4). Again there were difficulties regarding legislation and amendment of the articles.

In 1782 the war was over and independence won. The constitutional convention met at Philadelphia to raise the articles of the confederation. The American federation was established on the ruin of the old confederation. George Washington was chosen to be the first President of the United States of America. In the beginning the states did not opt for the new federation. But a little later they joined it. In the initial years there were 13 original members of the Federation. Today the USA consists of 50 states covering above 30,22,387 sq. Miles of area. About 2/3 of its population inhabit the powers and cities and 1/3 live in the rural areas. Nearly 2% of the population is comprised of Negroes. There is slight preponderance of women over men. The country is very rich in mineral resources. The industries are flourishing. America today, is the mightiest country of the world both economically and militarily. America, today, leads the western block.

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SALIENT FEATURES OF THE US CONSTITUTION

- **What are the salient features of the American Constitution?**

(A-95, S-97, A-99, A-2000, S-2000, S-01, A-02)

Ans. ## Introduction

The Constitution of the United State is the oldest written constitution in existence in the world. It was the first cnonstitution to be framed by duty set up assembly in the modern world. The constitution of the USA is neither a revolutionary document not new invention in political science. Infact, there is very little in the constitution that can be regarded as new. The men who drafted the constitution were quite femiliar with the Governments of the past, the English constitution and the constitution of the various contries in Europe. They were well acquainted with the writings of eminent political thinkers of the age like Locke, Blackstone, Montesquieu and Rousseau. Gladstone, the Great British statesman characterised the American constitution as the most wonderful work ever struck off at a given time by the brain and purpose of man. The Philadelphia convention which drafted the USA constitution in 1787, was described by Jefferson as "an assembly of demigods". If fashioned a constitution which for almost two countries served the country in war and peace, in calm and crisis, without any fundamental change. The constitution embodies the most adequate mechanism to run a federal democratic state.

The salient features of the American Political system are as follows.

1) The Constitution is A Document Very Brief and Simple

The constitution of U.S.A is a very brief and simple document. Even with all its amendments it consists of hardly

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6,000 words covering about 12 to 15 pages. It can be read through with ease in about half an hour. Following a brief preamble, three main articles are devoted to the legislative, executive and judicial branches. Four shorter articles are concerned with the position of states, the modes of amendment, the supremacy of the national power and ratification. Then there are twenty two amendments given at the end. The language of the constitution is very simple, direct and concise. There are no ambiguous phrases. Of course some clauses have been subject to different interpretations. The constitution is on the whole the work of plain honest men. It the political cheorists had written it, very likely they would have filled it with high sounding Phrases

2) **Popular Sovereignty**

The U.S constitution is based on the principle of popular sovereignty. Unlike British Parliament, neither the congress nor the state legislatures are sovereign there but the supreme power in United States belong to the people as a whole. The people are source of all powers. The constitution declares itslf to be the act of the people. It establishes and maintains a system of government based an consent not coercion. The constitution opens with the following words "We the people of the United Stated do ordain and establish this constitution". It is however not a direct but a representative democracy as there is no provision for the direct participation by the people in legislation or otherwise. As Lincoin said, "It created a government of the people, by the people and for the people".

3) **The American Political System has a Bi-cameral Legislation**

Unlike the articles of confederation which established a uni-cameral legislature, the constitution of 1787 provides for a bi-cameral legislature. According to Article 1 of the constitution, "All legislative powers are vested in the congress' The congress is a bi-cameral legislature consisting

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of the House of Representatives and the Senate. The Senate is the upper House and is normally called the strongest upper chamber of the world The lower chamber is the House of Representative and does not enjoy a superior position like its counterpart in England the House of Commons.

4) **Federal Polity**

The American constitution is federal and this federal system introduced in 1787 is the most important contribution of modern world. It is the first federal constitution in the world. It created a new government and endowed it with a definite range of authority. Thus there is a division of powers between the Central Government and the regional governments. The national government was given jurisdiction over matters of national importance i.e., defence, foreign affairs, commerce, currency etc. The eighteen powers conferred on the Central Government are enumerated in Article I section B. The residency powers are reserved to constituent states. Thus the American States or units have autonomous powers. The centre can not meddle with their affairs. The constitution also sets up a supreme court which is independent and is competent to settle disputes between the national and the state governments.

5) **It establishes a Presidential System**

Unlike the Parliamentary system of England, the government of U.S.A has adopted the pattern of the Presidential system. Under this system the executive is constitutionally independent of the legislative and is not responsible to it for its acts of omission and commission. The constitution empowers the executive head with well defined powers. Article 11 says that all the executive powers will be vested in the American President. Under this system the chief executive head the President is not merely a titular executive but he is the real executive and he exercises all the powers which laws and the constitution confer upon him. The President of United States can not be removed by a vote of no

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confidence by the American Congress. There is a set procedure if he is to be removed, the procedure of impeachment is followed which is a very difficult process. That probably is the reason that in the last 200 years not even a single President has been removed by the process of impeachment.

6) Extreme Rigidity

Practically all written constitutions of the world are rigid but the American constitution is most difficult to amend. The process to amend the American constitution is the most difficult to go through. This amending process consists of two acceptance of the proposal of amendment or its ratification. It is on account of this rigidity of the amending process that only 26 amendment can be proposed by 2/3 majorities in both House of Congress or it can be proposed by a constitutional convention called by the congress upon the application of the legislatures of the 2/3 ratified either by the legislatures of ¾ of the states or by a special conventions called in at least ¾ of the states.

7) Separation of Powers

Montesqufeu, the exponent of the theory of separation of powers is said to be the guiding angel of the American constitution. Three branches of the government have been kept separate from each other. The Congress makes Laws, the president executes them and the Indiciary interprets them. The President does not sit in the congress and participates in its deliberations. Hence the Congress can not oust him by a vote of non-confidence. The President also can not dissolve the congress.

8) Checks and Balances

The theory of checks and balances also was kept in mind by the framers of the American constitution. This was done to avoid concentration of authority and secure liberty to the American people. Thus President of U.S.A. was vested

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with veto power to check mate the despotic legislative authority of the congress. Similarly the congress was empowered to impeach the President who might develop monarchical evolution if not fettered properly. The judiciary was to impose checks both on the legislature and the executive as the Federal Courts were vested with the power of judicial review. The Senate's approval was thought indispensable for the appointment and treaties to be made by the President. Thus 'power is to half the power'.

9) Bill of Rights

The original draft of the constitution did not make any provision for rights of the people. These rights were incorporated in the constitution through a number of amendments effected after the promulgation of the constitution. Thus the amended constitution guarantees fundamental rights of person, property and liberty to the people. These rights are enforceable by the courts of law. In U.K. on the other hand no rights have been incorporated in the constitution.

10) Judicial Review

The federal judiciary has been empowered to exercise power of judicial review over the legislative enactments and the executive orders. As such the federal judiciary acts as the guardian of the constitution. Infect the Supreme Court has so interpreted the constitution that it has adopted to the changing needs of society. Critics term this power of judicial review as the judicial veto. A few term the supreme court as the "third chamber". In U.K. judiciary does not play such an effective role. It can not challenge the acts of the Parliament as unconstitutional.

11) Republicanism

The U.S.A. is a Republic with the President as the elected head of the state. The constitution derives its authority from the people. In U.K. constitutional monarchy persists. The

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head of the state is a King or Queen who holds office on the hereditary basis.

12) **Dual Citizenship**

The U.S.A. constitution makes a provision for dual citizenship for the people of the United States. An American is a citizen of USA and the state to which he belongs. In U.K. on the contrary single citizenship is provided. An Englishman can live in any part of the country but he is deemed to be the citizen of U.K.

Keeping in view the features of the constitution as discussed above, we can safely conclude that the features of the U.S.A. constitution are nothing but mere contradiction of that of the British constitution.

AMERICAN PRESIDENT

- **The American Constitution provided a Presidential system of Government. Discuss.**

(S 1995, (A1997, (A2001)

- **How the American President is elected? What are his powers?**

(A 1996), (A 1998), (S 2001)

- **Explain different powers available to the American President ?**

(A 1999)

- **What are Executive Powers of the USA President.**

(S 1999)

- **What are the legislative powers of the President of U.S.A.**

(A 2000)

- **Discuss the President of U.S.A. as Chief of administration. What are his powers of appointment**

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and removal?

(S 2000)

Ans. THE MODE OF ELECTION OF THE AMERICAN PRESIDENT.

Article II of the constitution deals with the office of the President in America. The question of mode of election of the American President entailed lot of controversy among the framers of the constitution. Direct election was proposed but rejected on the plea that it would result in chaotic conditions. Election by Congress was another suggestion but it was rejected on the ground of being a negation to the principle of separation of powers. It was also feared that the President might become a suppliant tool in the hands of the Crown.

(1). Indirect Election adopted.

Indirect election method was finally adopted. The President should be elected by an electoral college consisting of as many presidential electors as is the number of members in both the House of the Congress. Each state is to send as many representatives as it has senators and representatives in the Congress. Since each state is represented by two senators in the Congress, hence the total number of the total representatives representing each state in the electoral college will be equal to number of its members in the House of Representatives plus two. Suppose state A is represented by five representatives in the House of Representatives, the number of members to be elected for the electoral college from state A will be equivalent to 5+2 i.e., 7. At present there are to be 537 members in the-electoral college as the House of Representatives and Senate consists of 437 and 100 members respectively. A candidate getting majority of total votes (i.e., 269) is declared elected.

(2). Procedure to elect the President.

1). Nomination of Candidates. The candidates for

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the President and Vice President are nominated by the parties. The Domocrats and Republicans have established the practice of choosing their representatives at national conventions. Delegates to these conventions are chosen from the states by various methods. They number over a thousand. There is an equal number of alternates. They assemble in a hall. But in fact, the party nominee is chosen not by these 'bowling mole" but by party leaders. These nominees are supposed to be the choices of majority of delegates of each party.

The National Committee of each party consisting of one man and one woman elected from each state and territory conduct the national convention. It appoints a Credential Committee to examine the credentials of delegates and alternates. Each candidate's name is proposed by a prominent supporter. The strongest candidates generally hail from most populous states which have the largest electroral vote. Votes are cast statewise in alphabetical order. An aspirant must get a clear majority of the total convention vote to get elected. If no candidate gets the requisite majority another ballot is taken. It goes on till a person with clear majority is elected. For example in 1912 the Democratic Nomination of Wilson was achieved on the 46th roll call after five days of balloting. According to a convention if a President aspires to run for a second term he is promptly nominated.

2). The Campaign. After the nomination of the Presidential candidates and their subsequent election by their respective party conventions nation wide Presidential campaign starts. The parties set up national and state committees and open headquarters in two great cities. Each party issues a campaign text book which contains the party platform, the biographies of the candidates and other material required for propaganda purpose. A host of political professionals move from place to place, deliver speeches and convince the voting of the superiority of the respective candidates.

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3). Electoral College. Every citizen of 21 years of age or above is entitled to vote. In theory the voters cast their votes for the presidential electors. Each of the 50 states choose as many electors as it has Senators and representatives in the Congress. The Presidential electors are in fact elected in each state as a group and not as individuals. All the nominees of the party which polls the highest number of popular votes in a state are deemed to be elected.

Each party (Democrats and Republicans) puts up a list of Presidential electors before the voters in each state. On Tuesday after the first Monday in November of every leap year election to the Presidential electors, takes place. These elections meet in the capital of each state and record their votes for Presidential candidates. A certificate of election is then forwarded to the Chairman of the Senate by each state. Then in a joint session of both the Houses of Congress held at Washington presided over by the Chairman of the Senate the sealed ballot boxes are opened and votes counted. A party securing majority of votes in any state is entitled to all electoral ballots of the state. The person securing an absolute majority of votes is declared elected. In case no candidate secures the required majority of votes, the House of Representation is empowered to elect one person from amongst the first three candidates securing the highest number of votes.

3). Criticism. The process of electing the President of the USA is perhaps the longest and most complicated process. Instead of the recognised leader of the majority party assuming office after a three weeks campaign by his party. Here is a period of six months needed merely to decide who at least temporarily, as the head of either of the major parties. An appraisal of the system reflects that the dreams of the framers of the constitution stand shattered. Method of election hardly remains indirect.

In fact the election method has become direct. Not too

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many hours after the polls of Presidential elections, it is revealed to everybody who is going to be the next President.

(B). Presidential Qualifications.

The Constitution provides that to be elegible for election as President a candidate must be .

(a) A natural born American citizen;

(b) At least 35 years of age ; and

(c) A resident of United States for at least 14 years.

The qualifications stated in the constitution are not rigorous but those imposed by custom and necessity are more severe. Sometimes, a great national hero like General Eisenhower emerges to break the pattern. Most of the Presidents are drawn mainly from the Senators, Governors, Cabinet Ministers, Ambassadors and Key Officials on previous administration. The party needs a candidate who in the words of Harold Laski, "Will make the wide appeal and negatively will offend the least proposition of the electorate. He must not be kind of man whom it is obviously easy to ridicule in a compaign either because of he is "viewy" or for any other reason". The old religions and ethnic prejudices seem to be fading but still it is difficult to elect a Roman Catholic. Prejudices have also existed against the election of a Southerner.

(C). Term of Office.

The Constitution lays down that the President shall hold his office during the term of four years. Originally no limit was laid as to the number of times a person might be reelected President. But a convention was set up by George Washington the First President of the United States of America of limiting the term to two. Theadore Roosevlt in 1909 contested the election for a third consecutive term but he was defeated at the polls. Thus the two term doctrine seemed to have become an accepted rule of American politics.

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(D). President salary and other benefits.

The President shall get such salaries and allowances as may be fixed by Congress from time to time but they should not be reduced during one's term of office. The President at present receives an annual salary of $200,000. There is a provision of life time pension of $60,000 a year for ex-President and $20,000 a year for their widows. The funds for such purposes as travel, entertainment, up keep of the White House etc. are provided in addition of the actual salary.

(E). The powers of the President of USA.

The American Presidency was described by Lord Bryce as the greatest office in the world to which a man can rise by his own efforts. Ogg and Ray also opined that, "European dictators apart, the American President has become the most powerful executive office in the world." As to the range of his powers and as to the special position in which he is placed – as Head of the State who is his own Prime Minister. President's position is unquestionably unique in the world.

1). **President as Chief of the State.** "The President of the USA" observed Laski "is both more or less than a King, he is also both more or less than Prime Minister". His office has become the focal point of politics. The eyes of the Americans are fixed towards him and his policies. He combines in himself a powerful chief of state representing the whole Union and rising above the claims of majority or minority groups. As chief of state he exercises the power to grant reprieves, and pardens also for all offences against the United States. As ceremonial Head of the nation his responsibilities are fatiguing indeed. He receives of royal visitors and ambassadors, makes public announcements on matters of national and international importance, grants interviews to Congress men and Senate leaders; he holds press conferences, he has to make tours etc.

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2). **President as Chief Executive.** The President's executive powers are not only derived from the constitution, they have their sources in statutes, judicial decisions and exigencies of the situation also. Executive and administrative powers may be discussed under the following heads:

(a) **The President is sole Executive.** The British sovereign reigns but does not rule; all the real executive powers lie there with the cabinet not the monarch. The President of the USA has large powers and he really governs. The cabinet members in the USA are essentially Presidential advisers.

(b) **The President acts as Head of the National Administration.** The President takes care that the laws are faithfully executed. He has no power to execute one law and suspend the execution of some other law but the vigour or leniency with which a particular law is enforced is naturally linked with the President's interest in or apathy to a particular cause.

With the passage of time, the scope of federal activity has multiplied many folds. To the traditional list of activities foreign affairs, defence, law and order, postal service and fiscal matters have been added such affairs also as health, sanitation, education, housing, agricultutre, commerce, welfare and conservation of natural resources. For the coordination and operation of these departments the President alone is responsible.

(c). Powers of Appointment and Removal. Federal appointments fall under two categories:

i) Superior officials of the United States such as ambassadors ministers, judges of the Supreme Court are appointed by the president with the advice and consent of the Senate;

ii) Inferior jobs on the other hand are filled by departmental heads under the rules and requirements of the merit system.

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(d). Powers of pardon, reprieve and amnesty. The constitution vests in the President the power to grant reprieves and pardons for offences against the United States except in cases of impeachment. The President can grant full pardon or a conditional pardon. He may decide to commute a sentence which has the effect of changing punishment into another less severe. He may grant a reprieve which will suspend or delay the execution of condemned person or he may refuse to take any action at all.

3). The President as Chief Foreign Policy Maker. With respect to foreign and military policies the President's powers are so great that he seems to be the sole spokesman for the United States in international circles. With the progress of technology and the maturing of USA as a world power, the USA President has become a world figure of the first magnitude. As Chief of the foreign affairs, the President appoints the Secretary of State and Ambassadors. He has the power to recognise a newly established Government. The constitution specifically gives to the President the power to make treaties provided two thirds of the senators concur. The President may make commitments to foreign powers through the instrumentality of executive agreements also under the constitution only treaties must have the consent of the senate; other type of compacts can be made without the participation of the Senate.

4). Formulation of the National Foreign Policy. The President performs many functions which give direction and expression to national policy in the field of foreign affairs. The policy announcements made by the President ordinarily are accepted by other governments as expressing the will of the nation. "The record of the American President" , says Laski, "to the making of foreign policy is a remarkable one".

(5). President as the Chief of the Armed Forces. The constitution designates the President as Commander-in-Chief of the armed forces. As Commander-in-Chief of the

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armed forces the President appoints all officers from Second Lieutenents to Generals, supervises and directs the work of Army, Navy and Air Force, presents budget for military expenditure and employs troops for the purposes, offensive and defensive.

(6). President's War Powers

1). Emergency Powers. When war comes the whole Governmental power gets centered in the President Then as Laski rightly says, "The nation requires action and it looks to the President to define the kind of action that is required". At the break of the civil war in 1861, President Lincoin took such steps as to call for United States volunteers to serve for three years to enlarge the army and navy and to suspend the writ of habeas corpus. He took these steps without seeking Congressional approval.

(7). Legislation Powers. The framers of the USA constitution desired that the President should not wield substantial powers in relation to the making of the laws. Yet under the constitution, President performs many functions in relation to law making. In fact, the past century has witnessed an ever increasing Presidential role. in the initiation of new legislative programmes. We may consider the President's legislative powers under numerous heads.

(a) **Speacial Sessions of Congress.** The President does not convene the Congress into session nor has he power to prorogue it or to dissolve any of the two Houses. But he may on extraordinary occuasions, convene special sessions of one or both House of Congress. In case of disagreement between them with respect to the time of adjournment, the President is authorised to adjourn them to such time as he should think proper.

(b) **The Presidential Messages.** The constitution of the United States requires the President form time to time

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to give to the Congress information of the state of the union and recommend to their consideration such measures as he shall judge necessary and expedient. This is the basis of the President's right to send messages to Congress.

(c) **Presidential action on a Bill and the Veto Power.** The constitution provides that every Bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law be presented to the President of the United States. Any one of four things may happen when a bill or a general resolution of Constitution has been delivered to the White House.

First, if, the President approves the Bill, he signs it, he writes the word 'approved'.

Secondly, he may take no action on it within 10 days after it has been presented to him. Thereupon the bill becomes a law without his signature provided the Congress is still in session.

Thirdly, a bill may not be returned by the President within 10 days and the Congress might have in the meantime adjourned making it impossible for him to return bills of which he disapproves. The bill in that case does not become a law President's failure is sign of such measures that constitute what has come to be known as a pocket veto that is "The bill does not become law but the President is not required to send his objections to the Congress".

Fourthly, if the President does not approve the bill, he usually returns it with his objections to that House in which it shall have originated. Thus the President is authorised by the constitution to veto a bill. A vetoed bill is reconsidered by the House which may by a two thirds vote of those present and voting, over-ride a Presidential veto. If fewer than two thirds of the members vote in the affirmative, the bill is killed.

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However, if two thirds vote in the affirmative, the bill is sent with the president's objections to the other House where again a two thirds veto is necessary to pass the bill over the President's objects.

(8). Threat of Veto. To President's power to veto bills should be added the threat of a veto which in many cases enables the President to obtain Congressional action on his terms. The threat of veto induces the Congress to draft bills in such a manner as would meet the suggestions made by the President. The Civil Rights Act of 1964 was enacted after prolonged negotiations between the Congress and the Executive Branch.

(9). Executive Drafting of Proposed Bills. It is evident from a study of President's veto power that the Congress has the last word regarding even such bills as the President refuses to sign. Thus the Congress has both the first and last word on all legislation.

Impeachment.

For high crimes the President may be impeached and removed from office before the expiry of his normal term. The House of Representative adopts by resolution articles of impeachment and selects leaders to direct the prosecution before the Senate. The Senate, in such a case, acts as a judicial tribunal and its sittings are presided over by the Chief justice of the Supreme Court. The Senate may impeach the President by two-thirds majority of its members present in the House. The maximum penalty that can be imposed on the President is removal from the office and debarring him from holding any office of trust and responsibility.

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AMERICAN CABINET

- **How the cabinet in the USA. Is constituted and also explain its powers?**

(A 1999), (S 1998)

Ans. (1). Introduction.

The President's cabinet is not known to the law of the country. It has grown by convention during the last 200 years. It is an extra legal growth. The emergence of the cabinet system was due to the excess of secretariat and other works in the White House. President Washington Found it necessary to hold conferences of key officials for the consideration of different problems. The label cabinet came to be applied to this group meetings in the year 1793. The President's cabinet has thus arisen as a matter of convenience and usage. Washington's cabinet consisted of only four department heads. At present there are twelve department each under a secretary responsible to the President alone. These departments and their heads are

1. The department of state;
2. Judiciary;
3. Defence;
4. Interior;
5. Agriculture;
6. Commerce;
7. Labour;
8. Health;
9. Education and Welfare;
10. Housing and Urban Development;
11. Transportation;
12. Justice and Post-office.

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The heads of ten departments are designated as secretaries, for instance Secretary of State, Secretary of defence etc. The two other are the post master general who is head of post-office department and the Atorney General who heads the Department of Justice. In recent years, the permanent U.S. Ambassador to the United Nations has also been given cabinet Level position. The vice president also participates the cabinet meeting. Thus the cabinet in U.S. is not more than the President's advisory council. The members of the President's cabinet hold two kinds of responsibilities– they administer the departments of the national government and advice. The President of U.S.A. appoints the heads of such departments though with the consent of the senate. The Senate gives him a free rope in the selection of the cabinet. It is only very rarely that the senate rejects the president's nomination. The cabinet in U.S.A is taken for the President's family. Traditionally the cabinet is expected of the heads of the executive departments.

(2). Size. The size of the cabinet has undergone a steady growth. George Washington's cabinet included only four heads of the existing departments. The cabinet's strength has increased to twelve with the creation of more departments. Besides President, the Vice President is also invited. The actual size of the cabinet therefore depends upon the number of persons, the President decides to include in it.

(3). Status of the Cabinet.

The U.S. cabinet is purely advisory body. It is a body of President's advisors and not council of colleagues with whom he has to work and upon whose approval he depends. The members of his cabinet are his nominees and they hold office during his pleasure. President Roosevelt consulted his personal friends more than his cabinet members. President jackson and his personal advisors known as 'Kichen cabinet' or 'Palace guards'. In the words of Brogen, the President is the ruler of the heads of departments. The President may or may

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not act on the advice of his cabinet. Indeed, he may or may not seek their advice. The President controls not only the agenda but also the decision reached. If there is voting at all the President is not bound to abide by the majority view. The only vote that matters is that of the President. In fact, when the President consults the cabinet, he does so more with a view to collecting the opinions of the members to clerify his own mind than to reaching a collective decision. In short the members of his cabinet are his subordinates or advisors while the President is their boss. The cabinet is what the President wants it to be. The cabinet has no independent existence, power or prestige.

(4). Comparison between American and British Cabinet.

Both America and Britain have cabinet in their respective countries, but they fundamentally differ from each other. The American cabinet can be said to resemble the British cabinet in one thing only. Both have arisen from custom or usage while in all other respects the American cabinet stands in sharp contrast to its American counter part. The chief differences between the two are as follows:

1) Difference Regarding Constitutional States.

The contrast is because of the different constitutional systems in which the two cabinet function. The British Parliament government is based on the close relationship between the executive legislative branches of government. So all the members of the British Government are members of Parliament. They are prominent leaders of the party. They present legislature measures to Parliament participating in debates and are entitled to vote.

On the other hand, the American constitutional system Presidential which is based on the principle of separation of power. So the members of the cabinet can not be the members of the congress like the President himself. They may appear before congressional committees, but they can not move

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legislative measure or speak on the floor of either House of Commons

2) **Membership of Legislature**

In the Presidential system of U.S.A. in case a member of either House of Congress joins the Presidential cabinet, he must resign his seat in the House. Where in Britain, if a member of the cabinet is chosen from outside the Parliament, he must seek membership of the Parliament within period of six months, otherwise it will not be possible for him to continue as minister.

3) **Political Homogeneity**

British cabinet is cahracterised as political homogeneity, all its members being normally drawn from the same party. The American cabinet may be composed of politically hetrogeneous elements. Presidents frequently ignore party consideration in forming their cabinet.

4) **Ministerial Responsibility**

The British cabinet hold office so long as it enjoys the confidence of the House of Commons which is the lower House of the British Parliament. But in U.S.A. the ministers are to act according to the wishes of the President and they are responsible to him alone.

5) **Collective Responsibility**

The British cabinet always functions on the principle of collective responsibility. Its members are individually as well as collectively responsble to the Parliament. But this is not the case with USA.They can remain in office during the pleasure of the President.

6) **Official Status**

Membership of the British cabinet is a high office which one gets as reward for successful parliamintary career. It may be the stepping stone to Prime Ministership. Where as

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in America many of the persons appoited to the cabinet have little or no congressional experience. It is not even, necessarily a step towards the Presidency. According to Prof. Laski, "It is an interlude in a career, it is not itself career".

7) **Position of their Heads**

Members of the American cabinet stand on a completely different footing in their relations with the President from that of the members of the British cabinet in their relations with the Prime Minister. The Prime Minister is the leader of his cabinet team. His position with his eolleagues is that of a primus-inter-paris or first among equals. He is by no means their boss or master. He Hazards his head when he displeases with a powerful colleague. In other words he cannot disregard a powerful colleague without endangering his own position.

On the other hand, the members of the American cabinet are not the colleagues of the President. They are his subordinates. The President is the complete master of his cabinet which in fact is his own shadow. Members of the cabinet are his subordinates at best advisors and at worst his office boys. According to Laski. "The real fact is that an American cabinet officer is more akin to the permanent Secretary of a Government department in England than he is to be a British Cabinet Minister".

Keeping in view the composition, position and the relationship of American cabinet with that of President, Prof. Laski describes that the cabinet of U.S.A. is one of the least successful of American federal institutions. Being completely overshadowed by the President and being execluded from congress, the cabinet officer has no independent forum and no independent sphere of influence. An influential member of the Senate is in a better position to influence public policy because he has a sphere of influence in which he is his own master Prof. Laski rightly contends that "the American cabinet hardly corresponds to the classic idea of a cabinet in

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which representative government in Europe have accustomed us."

VICE-PRESIDENT OF AMERICA

- **Write a Short note on the Vice-President of U.S.A.**

(S 1999)

Ans. (1). Introduction

The framers of the constitution have provided for a Vice-President of the United States. Many of the delegates at the Philadelphia convention felt that the office was unnecessary. The office of the Vice-President was created with qualifications similar to those laid down for President. The Vice-President of USA holds an office of great potentialities but of little actual power. The constitution requires the Vice President to posses the same qualificantions as are preseribed for the President.

1) He must be a natural born citizen of the United States.

2) He must have attained the age of 35 years.

3) He must have been a resident of the US. for at least 15 years.

The Vice-president is elected at the sametime in the same manner and for the term of four years as the President. According to the original arrangements, a presidential candidate obtaining The second highest votes of the electors was declared as vice President. In case two or more candedates received the same number of votes the vice president was elected from among then by the senate. This arrangement was changed by the 12th practice. Separate sets of candidates are nominated for the Presidency and the Vice-presidency. The candedate for the Vice-presidency who polls an absolute majority of the votes of presidential electors is elected Vice-president. If no candidate receives an absolute

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majority the Senate makes the choice between the two obtaining the largest number of votes.

The Vice-President of USA receives a salary of 62,500 dollars per year.

(2). Functions.

The constitution assigns two functions to the Vice-President one potential and the other actual. Vice-President is the Presiding officer of the senate. He is not a member of the Upper House but presides over it. He has no vote but in case of a tie, he can exercise a casting vote. As the presiding officer of the Senate, Vice-President performs normal duties of a Chairman. Roosevelt, when he presided over the Senate referred to it as an office unique in its functions of rather in its lack of functions. Vice-Presidents have actually been called upon to take over the Presidency in the event of the chief office falling vacant. The candidates generally chosen for the Vice-Presidency are second raters. There are exceptions like Lyndon Johnson but usually much consideration is not given to his qualifications, the only limitation imposed by law is that the President and Vice-President both cannot belong to the same state. In practice, they have gone a step further and the two candidates are chosen from two different geographical regions. Thus if the President is from the eastern state, his running mate is from the west, if the President is from the North the Vice-President is from one of the Southern states.

(3). Succession to the Presidency

The potential of the Vice-President is to fill to the office of the President in case of the removal of the President from office, on his death or inability to discharge the powers and duties of the said office. Thus the Vice-President does get or officiate as the President for a short period for the moment the office of the President falls vacant, the duties of the Cheief executive shall devalue upon the vice-President. He resumes the Presidency and remains in office till the next election of

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the President. The constitution has authorised the Congress to decide by law who will succeed in case of death, resignation, removal or disability both of the President and Vice-President.

The office of the Vice-President has developed along a line different from that expected from the constitutional makers of the U.S. According to Munro, the founding fathers intended the office to be a dignified one and a sort of preparatory school for the chief executive position. Actually, however, Vice-President have been forgotten men in American history. The Vice-President of United States is generally regarded an object of pity and is made a bill of endless jokes. In this connection Prof. Laski says, "The Vice-President has been little more than a faint wrath on the American Political Horizon." Much however depends upon the personal relationship between the President and his number two. Mr. Johnson was sent out by President Kennedy as his envoy to renew contacts with foreign Governments. Nixon was also sent to various foreign countries as special envoy of the President to iron out differences with those Governments or to improve relations with them. However the fact remains that most Presidents have not availed themselves of the limited assistance the Vice-Presidents may render.

Some recent Presidents have tried to utilize the talent that the Vice-Presidents possess. There can be no difficulty in the two leaders working together particularly when they both belong to the same party.

AMERICAN CONGRESS

- **Discuss the Composition and Functions of the American Congress.**

(S 1995)

- **Write a Comprehensive note on the American Congress.**

(S 1996)

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- **Explain the powers of the Congress in U.S.A.**

(A 1997), (A 1998), (A 2001)

Ans. (1). Introduction.

Article I of the constitution states, 'All legislative powers herein granted shall be vested in a Congress of the United States which shall consists of a Senate and House of Representatives". The bicameral system was adopted by the constitutional convention both for historical and practical reasons. All but one of the thirteen American Colonies had a legeslature consisting of two Houses. Moreover the existence of a second chamber seemed to provide a conservative check on the rashness of the House of Representatives. Another consideration was that the bicameral system would maintain the power equilibrium between the various units of the federation. Through the provision for two chambers, it was possible that atleast in one House all the states got equal representation, regardless of the size or population.

2 Powers and functions.

The powers and functions of the Congress are explained below:

1) Legislation

Congress can legislate not only on the matters enumerated in the central list but on the concurrent affairs as well. It can exercise its authority on all such matters as have been prohibited to the states. Neverthelss, there are certain matters over which the Congress by itself does not legislate and leave for state's legislation, such as bankruptcy. Some of the concurrent affairs on which both Congress as well as the state legislature can legislate are; commerce, labour, general welfare, transportation, electricity, etc. Interpretations have also enganced its sphere of legislation. Perceiving the growing trends of centralism in a federation, the judges gave liberal

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interpretations to the Constitution in favour of central government even at the cost of state autonomy, and thereby expanded the role of the Congress.

2) Constitutional Amendment

Congress can initiate proposals for amendment in the Constitution by two thirds majority but it got to be ratified by the state legislatures. The Founding Fathers, in order to secure state's autonomy, gave due participation to the states in amending process.

3) Financial Control

Without the approval of the Congress, no tax can be raised nor any amount spent. The President prepares the budget and submits before the Congress for its approval. The latter cannot only reduce the estimates regarding demands for grants, but propose an increase as well. From this point of view, Congress is more effective than the British Parliament. In British Parliament, the government is present on the floor of the House to defend its financial policy. As the failure in getting it passed implies a vote of no-confidence against the government, all the estimates are generally approved by the Parliament in their original form. But in the Congress, many changes take place in the fiscal estimates due to the absence of government in the Congress and the working of Separation of Powers.

4) Adiminsterative Control

Despite the working of the Principle of Separation of Powers, Congress has been assigned certain administrative functions too. It can declare war and make peace. The Congress, through its enactments, can regulate the organistion and functioning of different administrative departments and agencies. The Senate ratifies all the Presidential appointments of federal officials and the treaties made with foreign nations. Hence it can indirectly affect President's administrative and foreign policies. The Congress enjoys the authority to appoint

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commissions and committees for investigative purpose and to control the administration, as it cannot rely simply on the information provided by the government to guide legislation. The examples regarding the setting up of commissions are: the Inter-state Commerce Commission, Federal Tariff Commission etc. Till recently, the Congress has been passing resolutions to restrict President's power to issue executive decrees and that of delegated legislation. The Congress has employed certain other methods as well to control the executive:

(a) Fiscal legislation in minute details to limit the discretion of the executive.

(b) Detailed codification regulating the activities of different administrative departments.

(c) Passing resolutions, suggesting new lines of policy.

(d) Probing into the conduct of different administrative departments.

5) Investigations

Congress, from time to time, can inquire into the working of different administrative departments. Both Houses of the Congress can seek necessary information from any government agency; while Congressional Committees have very extensive field of inquiries. While performing their functions these committees can call for public records and summon any public official for evidence.

6) Selective Functions

According to the Constitution, in case no candidate gets clear cut majority of the Elector's votes during Presidential Election, the House of Representatives shall elect the President from amongst the three candidates with highest number of Elector's votes. Almost similar function is performed by the Senate in connection with the election of

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Vice-President.

7) Judicial Powers

Congress makes laws regulating the organization of the judiciary and all Courts under the Supreme Court are organized by acts of Congress. It also determines the exclusive jurisdiction of the Supreme Court. The latter has, of course, somewhat superior position over other branches of government, yet the Congress can initiate revolutionary changes in the structure of Supreme Court by prescribing the number of its judges. Each House of the Congress maintains discipline among its members, and can expel any one of them from the session under a decision taken by two-thirds majority. It can punish any person on the charge of violating the working of the legislative process. For example, if any person refuses to appear before any committee of the Congress as a witness, he can be declared guilty. Congress has the power to impeach the President, Vice President and other federal officials. Both House of the Congress are authorized to decide jointly about the admission of a new state into the Union.

(3) Conclusion.

A closer study of the working of American governmental system will reveal that rigid Separation of Powers does not exits in practice. The Congress interferes in the sphere of both the branches. Moreover, under the liberal judicial interpretations, the sphere of Congressional legislation has been enhanced even at the cost of state's autonomy. The Congress not only enacts laws but can also make a guide line for their execution. An Article of the Constitution prescribing 'to make laws necessary and proper to put into execution the foregoing powers' in fact, paved the way for increasing the legislative powers of the Congress. At present, it sets standards of work and decides matters relating to railway and agriculture.

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It cannot, however, be denied tha Congressional control over the executive is not so effective as exercised by the British Parliament, due to the 'Separation of Powers' since Congress is not authorised to hold the Chief Executive accountable. Secondly, the President can issue orders to the heads of the departments to refuse furnishing necessary information required by the Congress. The members of the Congress do not enjoy the power to ask questions from the Ministers. When the Congressional majority and the Presidency belongs to the same political party, maximum cooperation can be seen in the working of the government and under such conditions Congress can exert administrative control.

AMERICAN SENATE

- **Discuss the role of Senate in American system.**

(A 1995), (S 2001)

- **discuss the tenure, selection and duties of the Senate of U.S.A.**

(A 1999)

- **Discuss the organization of Senate under the U.S.A. constitution.**

(S 1999)

- **American Senate is the most powerful chamber on earth. Explain.**

(A 2002)

Ans. **Introduction.**

The Senate is the upper chamber of the American Congress. It is a 'very real and living force' in the American political system.

1) **Equal Representation of the states in the Senate.**

Senate is composed of 100 members two from each

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state regardless of its population. The provision of equal representation was the result of a compromise between the large and the small states, and between the Northern and Southeren states for each section was jealous of the power of the others section. Equality of state representation mean that Alasaka inhabited by fewer than three lakh souls sends as many Senators to the Senate as New York whose total population exceeds 2 crores.

2) **The Term of the Senators.**

The term of the Senators is six years. It is a continous body in the sense that it is not subject to total transformation after every six years. As a matter of fact 1/3 of the members retire every second year. Moreover the term of office is planned in a manner that the terms of both the senators from a particular state should not terminate at the same time. If a vacancy happens by resignation or death of a senator, the governor of his state is empowered to nominate his successor to serve until the next general election. The rule of retirement after every two years results in a harmonious admixture of new and old influences. Most of the senators are re-elected with the result that some of them serve the chamber for as many eighteen or twenty four years.

3) **Qualifications for Membership**

The qualification for a member of the senate are that-

i) He should have attained the age of 30 years.

ii) He should have been a citizen of the United States for nine years, and

iii) He should be the inhabitant of the state from which he shall be chosen.

It is noteworthy that bare majority of the members present and voting is sufficient to exclude senators elect from the House. Expulsion of a member for disorderly behavior or some other grave reason on the other hand would need two

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thirds majority.

4) Method of Election

Originally it was provided that the senators would be elected by the respective legislatures of the states. The indirect election says Brugan, "gave colour to the belief that senators were state ambassadors of popular emotion like the Representatives". It also made a state to send its most distinguished citizens to the senate. It was thought that members of state legislatures would choose eminent statesmen, persons who are normally disinclined to contest election under a system which calls for their active participation in long drawn out hectic compaigns.

The method of election by state legislatures, however showed plenty of defects frequent deadlocks among members of state legislatures resulted in senetorial states lying vacant for quite a long time. Cases of bribery and virtual purchase of seats also were not lacking. As a result the method of indirect election was abandoned. The 17th Amendment ratified in 1913, presided that the senators should be elected by the people of each state. The new system gave a liberal orientation to the Senate. The Senators, in order to win a direct popular election were found in complete harmony with liberal or progressive programmes of the mid twentieth century.

Organisation of the Senate.

1) Senate's Chairman

The Vice-president of the USA is the presiding officer of the Senate. His powers as presiding officer are fewer than those exercised by the Speaker of the House of Representatives. He cannot cast a vote, unless the senators be equally divided on some issue. The Senators elect a President from among thermselves who presides over the senate in the absence of the vice-President. The President pro tempore is an important member of the majority party and plays an active role in the deliberation of the House.

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2) **Salaries**

The Senators and Representatives shall receive a compensation for their services to be ascertained by law and paid out of the Treasury of the Unite States. Under an Act of 1973 they draw an annual salary of $ 542,500. In addition they get allowances for secretarial assistance, stamps, stationery etc.

3) **Previleges of the Senators**

The constitution protects the members from assist during attendance at the session of their respective Houses. This immunity does not apply to imprisonment on a charge of treason. The constitution safeguards the freedom of speech in the Congress. No member of the Congress shall be liable to any proceedings in the Court in respect of anything said.

4) **Felibastering**

A Senator once on the floor may speak as long as he likes. He may yield the floor to another senator and when this speaker is through, the right to it goes back to the original speaker. It is a device to delay the proceedings.

5) **Senate Committees**

Lord Bryce observed that the most abiding difficulty of a democratic system is how to make large assemblies work promptly and efficiently for the disposition of legislative business. One of the methods proposed to overcome this difficulty is the committee system employed in all the major democracies of the world. The Committees are usually referred to as "the little legislation". It is the Committees that gather facts, examine witnesses, set a date for public bearings on the bill, study in detail the views of those in favour of and against the bill and on the basis of their findings prepare the reports and legislative drafts on which the Houses finally act.

There are four types of Committees:

i) **Standing Committees.** There are 18 standing

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committees each of them is a permanent committee. It has a fixed membership and deals with a particular subject.

ii) **Joint Committees.** Such Committees consist of members of both Houses. Four of them are known as standing joint committees. They have been created for the purpose of exercising supervisory control over such matters as Atomic Energy Budget Control, Congressional operations and Literacy. The Congress can create other Committees.

iii) **Special or Select Committees.** These are created occasionally to make some specfic investigation.

iv) **Confernce Committees.** It is a kind of Joint Committee whose function is to bring about a compromise between the two chambers who disagree over a particular legislation.

Functions and Powers of the Senate.

1) **Legislative Powers**

The constitution stipulates that the Congress shall have powers to lay and collect taxes to regulate commerce with foreign nations to coin money, to promote the progress of science and useful arts, to provide and maintain army and to make all laws which shall be necessary and proper for carrying into execution these powers. As a legislative body, the senate exercises co-equal powers with the House of Representatives. Bills, orders and resolutions should have the complete approval of both the Houses.

2) **Executive Functions**

The Senate shares with the President two most important executive powers.

(a) **The power to confirm appointments.** As a part of the checks and balance system, the constitution empowers the Senate to confirm or reject Presidential nominees

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for administrative or judicial posts. Ordinarily the Senate approves without question Presidential nominations of the heads of executive departments.

(b) **The Power to ratify Treaties.** Treaties with other countries are submitted to the Secate for ratification. They become effective only if approved by two thirds of the number of Senators present and voting.

3) **Quasi Judicial Functions**

Senate exercises certain powers which are of a judicial nature. It sets as a Court of Impeachment whenever President, Vice-President, judes of the Federal Courts and other Civil officials are impeached for high crimes and misdemeanours. The initiative to impeachment is taken by the House of Representatives whose judicial committee prepares the articles of impeachment and speacifies the charges against the accused. In case the charges are sustained by a majority vote in the House, the same are transmitted to the Senate for action. The Senate then functions as a Court.

4) **Senates Investigation**

No provision of the constitution authorises the Senate to inqurie into the working of executive departments or the private affairs of the individual citizens. Such a power has been frequently exercised both by the House of Representative and the Senate.

5) **Constituent Functions**

The Power of the Congress to propose amendments to the constitution is known as the constituent power. Both Houses of the American Congress possess the constituent powers.

Either of the House may initiate amendments to the constitution. Proposals to amend constitution must be carried by a two thirds vote in both Houses and they shall be valid only when ratified by legislatures of three fourths of the

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several states.

6) **Electoral Functions**

The Senate performs several electoral functions also. The votes of the Presidential and Vice-Presidential Electoral are sent to the senate, where the senate's presiding officer gets them counted at a joint session of both Houses. The Vice-President of U.S.A. as President of the Senate presides at the meeting. Should any candidate fail to obtain majority of the votes cast for Vice-President, the Vice-President would then be chosen by the senate from the two men with the most votes. The congress can also make law as to the time and manner of holding elections for senators and representatives.

7) **To Direct and Influence Public Opinion**

Public opinion has been the most dominant factor in shaping the policies of the government. Public opinion is, itsilf moulded in many ways. One such way is the congressional debate which rouses the people and keeps them informed about public affairs.

Conclusion.

Thus the American Senate is undoubtedly the most powerful Second Chamber in the World. With the passage of Acts of 1911 and 1949 the British House of Lords has become not only a second but a secondary chamber in the world. The Swiss Council of States, the Australian Senate and the upper chamber of Ireland, Belgium and Norway have also become politically unimportant.

HOUSE OF REPRESENTATIVES

- **What is composition and function of house of representative in America?**

(A 1998), (S 1997), (S 1999)

Ans **(1). Introduction.**

The House of Representative is the lower chamber of

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the American Congress. The framers of the constitution intended the House to represent the multitude, the common people.

(2). Composition of the House of Representatives.

The number of representatives shall not exceed one for every 30,000 but each state shall have at least one representative. The first House of Representatives had only 65 members. The permanent membership is fixed to 437 unless the Congress changed that number through legislation.

The qualification requisite for a person to be a representative are that:-

(a) He shall be a citizen of the United States.

(b) He must be 25 years of age.

(c) He should have lived in the United States (as a citizen) for atleast seven years.

(d) He should be a citizen of the state from which he is seeking election.

(e) He should not hold any office under the authority of the United States.

Although he usually is a resident of the district in the state which he represents, it is not required by law that he be so. Members of the House of Representatives are elected for two years. The House can not be dissolved earlier than two years. Its tenure can not be extended beyond two years period. The idea of two years term was to keep the members closely in touch with the people. Members of the House of Representatives are elected by the single member constituencies. The constituency is known as the electoral district. Each representative gets an annual salary of $ 3000 besides many other allowances and facilities. It has been rightly said that the House of Representatives is the most

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expensive law making institution in the world.

The House has full control over the method of procedure. It published a journal of its proceedings. It meets for every annual session on the first Monday in December and elects its own speaker and other officers. The speaker is the Party man and while discharging his functions as speaker, he favours members of his own party. The House is elected in November but the members occupy their seats on 3rd January following the actual date from which the life of every House is counted.

(3). Powers of the House.

Since U.S.A. caters to a presidential form of government, its lower chamber does not play that vital role which a lower House in a parliamentary form of government like that of U.K. and India is expected to play. It plays a second fiddle to the upper chamber, the senate which is designated as the most powerful upper chamber of the world. Its powers can be categorized as legislative, financial, executive, electoral and constituent.

1) **Legislative Powers**

It enjoys co-equal and coordinate authority with the senate in the domain of legislation. Ordinary bills can be initiated in either of the chambers. The senate can amend or reject a bill passed by the House unlike that of U.K. where the House of Lords can detain a non-money bill for a period of one year only. Generally in case of disagreement, the matter is decided either by mutual give and take or through a conference committee consisting of 3 to 9 members from each House A dispassionate study of legislative history of U.S.A., however reveals that the will of the senate has been prevailing in general.

2) **Financial**

As regards financial powers, the constitution specifies

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that the revenue bills must originate in the House. Thus in no way arms the House with superior financial powers. A revenue bill passed by the House can not only be amended but even rejected by the Senate. The Senate has in fact, been mutilating these bills to such an extent as it has amounted to virtual invitation of the bills under the guise of amendments. With regard to the appropriation bill, the constitution is silent. It can, however, be presumed that the Senate can initiate such bills of course the House very jealously guarded this privilege. It is, therefore, obvious that control over finance which establishes superiority of the British House of Commons over the House of Lords, is not vested with the House exclusively.

3) **Executive**

The House does not control the exective unlike that of England where the executive is responsible to the House of Commons and can be ousted by it. The only executive power it possesses is that along with Senate it can declare war and conclude peace. In fact the President can create such conditions which can compel the congress to declare war. It is the Senate which shares some of very important executive powers like appointment and treaties with the President.

4) **Judicial**

The congress has been given the important judicial power of impeachment. The President, Vice-President, judges of the Federal Courts and other high public officials can not be removed except through impeachment. The House of Representatives has the exclusive right to initiate impeachment proceeding by preparing charges against the official concerned.

5) **Constitution Amending**

The House participates in the amendment of the constitution. The proposals for amendments are to be made by 2/3 majority in both the Houses of the Congress.

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6) **Electoral**

It decides the election of the President when no candidate secures on absolute majority of votes. It elects one out of three candidates securing the highest votes.

(4). Position.

A student of comparative government will feel a little bewildered when trying to understand the powers and practical working of the House of Representatives. In all the democratic countries of the world, the lower chambers enjoy greater powers than the upper ones. But in America, the House of Representatives is less influential and powerful than the Senate though the intention of the constitution gods was to make it more powerful than the upper chamber. The reasons for its weakness can be sumned up as:

1) The House of Representatives is elected for a period of two years. Therefore the members of the House are always worried about their re-election. The result is that they can not discharge their duties seriously.

2) The constitution has conferred certain executive powers on the Senate and the House of Representatives has been deprived of those powers. So the men of ability and experience try to become members of the Senate.

3) The small membership of the Senate makes its discussion more effective and vigorous than those of the House of Representatives.

4) The House has placed restrictions on its discussions. The result is that the members do not have opportunity of taking part in detailed discussions and debates.

5) The Senate is also a directly elected chamber. This fact has enhanced the importance of the Senate at the cost of the House of Representative.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

- **Discuss different powers available to speaker of House of Representative in U.S.A. and discuss the procedure of his election.**

(A 1998), (S 2000)

Ans. (1). Introduction.

The most important officer of was the House of Representatives is the speaker .who "once regarded as a presiding officer and mediator is now the outstanding figure of the majority Party in the House". The speak ship although originated in the convention of the British Speaker but here evolved on pattern altogether different. In the U.S.A. the speakership has been a partisan office whereas in England speaker's prestige depends upon his impartiality.

(2). Election of the Speaker.

Sec.2 of the Article 1 of the constitution provides that, "the House of Representatives shall choose their speaker and other officers". The House is empowered to choose its speaker and other officers without restriction. But historically the speaker has always been a member of the House. Speaker's election is contested very much on party lines. The majority Floor Leader and his close associates forming the caucus of the majority party nominate a candidate and then the House proceeds to his election. The majority party puts up its own candidate for the office. According to a well established convention the aldestmember in service adminsters the oath to the speaker elect.

The speaker for most of the period between 1800 and 1910 exercised three main powers.

(a) The appointment of committees.

(b) The Chairmanship of the Rules committee ;and

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(c) The right to recognise a member.

(3). Present Powers and Functions of the Speaker. Broadly speaking the functions of the speaker and his powers may be divided into following categories:

1) **He presides over the meetings of the House.**

As presiding officer of the House, the speaker sees that the journal of the preceding seating is read. He decides all points of order which arise in the House and puts questions and motions to a vote. He may refuse to put motions which he thinks are merely intended to delay business. He signs all Acts, addresses, joint resolutions, writs and warrants ordered by the House.

2) **The power to Recognise**

No member of the House may speak or make any motion or offer amendments without first being recognised by the speaker. The Chairman of the Senate must extend the floor to senators without ascertaining the purpose the gentlemen have risen for. But the Speaker may ask, "For what purpose does the member wish to speak". If he is not satisfied with the reply, he can withhold recognition to those who wish to speak. The speaker may use his discretion in allowing the floor of the House to members. The power of recognition can be exercised by the speaker to favour his own party or so as to favour particular legislative proposals.

3) **The power to Interpret and Apply the Rules**

The House handles thousands of bills a year. So there must be rules for handling the bill, fixing the length of debate and permitting and forbidding amendments, to the bill. It is the committee on Rules which frames such rules and grants and with holds a "special rule". The Speaker is no longer the Chairman or even a member of the Rules Committee, but he still remains the power to interpret and apply the rules when any question of proper explanation arises. In interpreting the

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rules, he may give a decision serving as a new rule by itself.

4) **Functions regarding discipline and dignity of the House.**

The Speaker presumes order in the House and may suspend and adjourn the business in case of grave disorder. He can order the members to keep with in bounds in their references to one another or to withdraw words or expressions which he feels are un parliamentary or undignified. The Speaker must be referred to with respect and his ruling should be obeyed. He may instruct the sergeant-at-arms to quiet any disorder in the House. The Speaker can not however, expel a member for disorderly behaviour. This can only be done by the House itself and would need two thirds majority of the members present and voting.

5) **The Power to refer bills to Committees**

The Speaker refers the bill to standing committees for action. As a rule no discretion is used in reference to committees because each committee has jurisdiction over certain subject matter and all measures affecting a particular area of legislation are referred to that committee which has jurisdiction over it. Occassionally, however, a bill may be sent to any one of the two or more committees and if these committees are known to vary in their feelings toward the bill, the presiding officer's decision in the matter may be highly crucial.

6) **The power to Appoint Special Committees**

The revolt of 1910 deprived the Speaker of his power to appoint the members and chairman of the standing committees. But he still appoints members of select and conference committees. This power, however, is exercised according to certain well established usages. While appointing members of the Conference Committee, the Speaker usually follows the suggestions of the Chairman incharge of the bill. Similarly, the number of conferences is usually three two

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members of the majority party and one of the minority party. The Speaker also selects the Cairman of the Committee of the whole House. After the House, has resolved to convert itself into the committee of the whole House, the Speaker before leaving the chair appoints a Chairman to preside.

7) **The Speaker as a Party man**

Although formally elected by the whole House, the Speaker is openly a 'Party Leader' and is expected to use his office to further and promote the programme of his party. He does not sit passively in his chair, but takes an active part in debates. He takes part in Party Conferences and is regularly consulted by Floor Leader of the majority Party.

(4). American Speaker Compared with the Speaker of the House of Commons.

Both in U.S.A. and England, the Speaker presides over the House interprets the rules of procedure and settles questions of order. In both the countries he puts questions and motions to vote and announces the decisions of the House. The Speaker of the House of Commons in England is as much the custodian of the dignity of the House as is the Speaker of the American House of Representatives. Both may suspend and adjourn the business of the House in case of grave disorder. But here the similarities end. Speakership in America has not at all developed after the British pattern. The points of differnce between the position and role of the two speakers may be examined under the following heads:

1) In England the Speaker may be re-elected time and again whereas in America the Speakership has been a partisan office. The British Speaker is elected by the House but in the election of the Speaker certain conventions play an important role. By convention the Speaker once chosen holds office until he retires from the House of Commons. Although the House has the right to propose several candidates for the chair but the

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leaders of the Parties make sincere efforts to secure unanimous election.

In the United States instead the election is done on the Party lines and the Party in majority wins the ballot.

2) The British Speaker gives up the party affiliations whereas the Speaker of the House of Representatives remains a party man. The Speaker of the House of Commons never makes a political speech. He must put party aside and perform the duties of his office with tact, impartiality, a sense of humour and a spice of wit.

In the United States, the Speaker remains in intention and practice a partyman. He is regularly consulted by the Floor Leader of the majority party and his party caucus. He takes part in party conferences and helps the party to accomplish the programme planned by the leaders.

3) In Britain the Speaker is treated like a 'Chief Justice' where as in America he has become a Chief Legislator. For centuries, the Speaker of the House of Commons has acted like a 'Chief judge' He has no vote as a member but as chairman he has a casting vote. He has also been denied the right to speak in the proceedings of the House. As Chairman he allows each party a fair share of time allotted to the debate. He does not give any indication whether he agrees or disagrees with the opinions expressed in the discussions. He intervenes only on the points of order or procedure raised by the members. His decision in these respects can not be questioned.

The Speaker of the House of Representatives, on the other hand, is not merely a presiding officer and a moderator but an active politician. He is an outstanding member of the majority party in the chamber. He has great power over procedure which he exercises to carry through the programme desired by his party. He can withhold recognition to those who

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wish to speak and may refuse to put motions which he thinks are aimed at delaying the business of the House. He has the right to speak and vote too like any other member of the House. But in actual practice he does not vote when his vote is required to break a tie.

4) The British Speaker is usually returned unopposed at a general election whereas in America there can be no question of his unopposed return to the House. In America the seat is contested.

5) The Speaker of the House of Commons certifies that it is money bill whereas the American Speaker performs no such job.

(5) Factors responsible for the difference between the roles of the two Speakers. Both in England and in America the dignity and prestige of the chair would depend on the incumbent himself and the circumstances in which he was called upon to exercise the duties of his office. Speakerships in the two countries have evolved on entirely different patterns. What accounts for the difference between the roles played by the British and Ameircan Speakers? The most important factor is the presidential system of separated institutions which deprives the American House of the leadership of an outstanding figure comparable to the British Prime Minister. In England most bills passed by the Parliament are government bills. It is the Prime Minister and his colleagues in the cabinet who introduce ninetyfive per cent of the bills and assume responsibility for the fate of important measures under discussion. In U.S.A. House of Representatives there is no recognised leader that can be compared to the British Prime Minister. It seems therefore, natural that the power of leadership should have found its way to the speakership.

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PROCEDURE OF LAW-MAKING

Important Questions

- **Discuss the procedure of legislation under the U.S. constitution.**

(S 2000), (A 2002)

- **What do you mean by "Bill of Committee" and "Bill of Calendar"? How are the Bills on Calendar disposed of?**

(S 1999)

Ans. Procedure of Law-Making

1) Drafting of a Bill

Every Congress has to confront during its life, thousands bills, resolutions, concurrent resolutions and different reports. As all bills are moved, unlike Parliamentary practices, by private members, any member, therefore may introduce as many bills as he likes to initiate. It does not need prior sanction to initiate a bill. Proposals for legislation may also come from White House or from different federal departments, though formally through any private member. A separate agency, comprising expert draftsmen, has been involved in drafting the bills since 1918.

2) First Reading

A bill is generally introduced in the chamber in which the chances of its support are comparatively bright. Its successfull passage in one House, increases the chances of its approval in the other house as well. When a member wants to introduce a bill, he drops it in the box placed on the table of the clerk. A bill can also be introduced in both Houses simultaneously. With the exception of Money bills, all other bills can be introduced in any one House, the money bills always originate in the lower chamber. After its introduction, a bill can be taken up for discussion at any time during the whole session. First reading of a bill is no reading in fact as

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the bill is deemed to be read by having its title printed in the journal and in the Congressional record. All the bills introduced are arranged in order and distributed among the members after their publication.

3) **Committee Stage**

After its first reading a bill is referred to the concerned committee by the clerk. If he finds any difficulty in respect of the allocation of bill, the Speaker decides the issue and may send it to anyone committee. It is to be noted, that there are many committees that consider almost similar matters. At the time of introducing a bill, the mover normally suggests the name of the committee as well. Each committee has formed sub committees to scrutinise different aspects of a bill. The functions of the committees are not limited to the examination of a bill only, they rather exhaustively enquire into the matters involved and try to get all possible information. It can call for public records and public officials for getting first hand knowledge.

4) **Report of the Committees.**

After thorough examination of a bill a committee submits its report to the House. All the decisions in a committee are taken by majority vote and the minutes of its proceedings are not preserved. The whole proceeding is kept strictly confidential. A bill may be reported favourably or it may carry adverse remarks. Committee may also suggest alterations in a bill to an extent that sometimes the entire outlook of a bill may be changed. In fact, the fate of a bill is determined in the committee. Committees are not bound to report the bill back. Most of the bills are not considered at all by the committees.

Calendar Stage:

After the receipts of the report by the committee, the clerk puts it in a calendar which are of three kinds.

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(a) **Union Calendar.** All bills relating to income and expenditure and public property, which are reported favourably by the committees, are put in Union Calender.

(b) **House Calender.** All public bills, except money bills, are put in House Calender.

(c) **Private Calender.** All private bills are placed in Private Calender.

All public bills not necessarily be put in Union or House Calendar. Rather non-controversial types of public bills may be included in consent or discharge calendar. In discharge calendars, generally such bills are included as have been kept by a standing committee for thirty days without reporting it back. While placing the bills in different calendars the same order is preserved according to which these are received from the committees.

6) **Second Reading.**

During the Second Reading of a bill, the clerk reads out the title of the bill and if no body raises any objection it is deemed to have been passed without further detailed reading otherwise second and third reading is essential. At second reading, amendments are proposed and thorough discussion takes place. None of the members is allowed in the House, to consume more than one hour in his speech while there is no such limitation on the Senators. Generally, the recommendations of the Committees are given prior importance. If the bill is approved it has to undergo its third reading.

7) **Third Reading**

Third Reading is in fact, formal process. At this stage only the title of the bill is read ; detailed reading is also possible if the members insist to this effect. Finally, a vote is taken. If it is affirmative, the Speaker signs it and send it either

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to the other chamber or to the President for his approval, as the case may be.

8) **Conference Committee**

Political parties perform vital role in maintaining coordination between both the chambers. In case of disagreement, a committee is formed, consisting of members from both the chambers. This Conference Committee tries to explore points of agreement and prepares recommendations for removing the hurdles. Such committees normally consist of three to eleven members, including the mover of the bill concerned.

9) **Presidential Assent**

When a bill is sent for approval to the President, he may adopt any of the following options:-

I. He may simply give his assent by putting his signatures on the bill. Thus bill is transformed into law. Sometimes, the President does not want to approve a bill but due to certain expediencies or political pressure, he can't afford to veto it. Under the circumstances, he may let it be transformed into law without his signatures. But he issues a statement explaining the reasons for his disagreement and suggests that alterations may be done in the law in the next session of the Congress.

II. If the President has any objection, he may refer it back to the House of its origin along with his suggestions. If both Houses accommodate Presidential suggestions, the bill is sent again for his assent. But if the Congress does not agree with Presidential suggestions, the bill will have to be passed by a two thirds majority of both the Houses and as such it will become law without the assent of the President.

III. If the President does not sign a bill nor veto it within

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ten days and the Congress is still in session, it will become law without the approval of the President.

In case Congress adjourns its session before the expiry of ten days from the date when a bill has been referred for Presidential approval while he has not approved it, the bill shall become ineffective. This power of the President has been termed as Pocket Veto or suspensive veto. If the Congress, in its next session, still insists to get the same bill passed it will have to be passed by the Congress afresh. There is no surety that it will again be passed this time in both Houses. Hence the use of suspensive veto by the President, may become permanent veto.

It is to be noted, that the President may approve or disapprove a bill in toto but not in parts. Sometimes, he may issue a statement, after giving his approval to a bill, explaining his own interpretations of any ambiguous clause of a bill. A bill passes through similar stages in the Senate with the exception that the Committee of the Whole House is used only for the ratification of treaties. Secondly, Senators enjoy maximum freedom of expression on the floor of the chamber. The procedural rules relating to placing the bills on different Calenders are not fully observed in the Senate.

FINANCIAL LEGISLATION

1) Preparing the Budget

Before 1921, the Congress used to introduce the budget; but this method suffered from a serious drawback of undermining the administrative requirements. Consequently, the function to formulate fiscal policy was entrusted to the President. Method relating to the preparation of budget has closer resemblance with that of the British system. All the government departments send their estimates of expenditure to the Bureau of Budget. Director of the Bureau, who is an officer under the President, prepares the budget on the basis of estimates of expenditure and the proposals for raising funds.

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2) **Role of the Committees**

The budget is introduced in the House of Representatives on behalf of the President. Committees of the whole House then examine items of expenditure and proposals for raising funds Committee in Supply examines the estimates for expenditure; while the Committee on Ways and Means considers proposals for raising funds viz, income. Both these committees are assisted by technical staff. Different agencies of the government that need money for expenditure, appear before a sub-committee of the committee in supply to justify their demands. On the basis of the reports for these committees, the House prepares its own proposals. Money bill is then sent to the Senate for its approval. If the latter suggests any alterations in the fiscal estimates, it got to be approved again in the House of Representatives. Finally the bill is sent for Presidential approval. The President has the power to approve or reject the bill in toto, he can't reject any item contained in the budget. Generally, the President gives his assent to the bill as the government departments can't afford any delay regarding the approval of expenditure.

3) **Main features**

Two important features of financial legislation are noteworthy: First, there is the absence of concentration of responsibility in any one branch of government regarding the formulation and approval of fiscal policy. The executive branch prepares the estimates regarding income and expenditure and presents it to the Congress. The latter can approve, alter or reject it. Moreover, the branch that prepares fiscal proposals is not present on the floor of the Congress to defend these,viz, the Director of the Bureau of Budget and the Cabinet members are not present in the Congress. Secondly, members of both the chambers, unlike British parliamentary procedure, cannot only propose a decrease in the estimates but can also suggest an increase. Obviously, under such circumstances, the responsibility in conne tion with the

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formulation of fiscal policy can be concentrated neither in the Congress nor in the executive. An other important feature is the effective role of the Senate which, unlike British House of Lords, performs very important part in financial legislation.

By virtue of its control over financial legislation, the Congress can control other two branches of the government. From this point of view, both these branches are dependent on the Congress as the success of their working is dependent on the approval of the estimates of expenditure submitted by them. Nevertheless, for the last fifty years, the executive control over fiscal affair has become very effective, and the President has assumed a dominant role even in this field.

AMERICAN COMMITTEE SYSTEM

- **What do you mean by committee system in the U.S.A. congress and how does it differ from committee system in England?**

(A 1999)

Ans. 1. Introduction.

Congressional Committees enjoy important position in legislation while the British Parliamentary Committees could not gain much importance due to the dominance of the Cabinet. Committees of the Congress not only examine the bills initiated by the legislators but are also involved, in practice, in the drafting of certain important bills.

2. Utility.

As every Congress, during its two years span, has to confront almost more than ten thousands bills, only the most feasible of these are selected for thorough examination. A permanent Committee in each House is constituted for this task. Hence the burden of work on both the chambers is comparatively enlightened.

1) Members of the committees are generally seasoned and

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experienced persons in their respective fields. They gain more and more knowledge while acting in the same capacity for a longer period. Hence the Congress can utilise the services of experienced persons in matters of legislation. At present, the legislative business is not a very simple activity, it invovles rather much intricate matters that can be tackled by expert persons.

2) The Committees have sufficient time at their disposal to examine the bills thoroughly and can call for public records and other necessary evidence. The committee-men can also visit different places to get first hand information if at all it is indispensable. It is not possible for the whole house to do all such things.

3) As Cabinet members are not present on the floor of the House, the legislative process is carried on in the absence of administrative guidance. Hence there is a possibility that the laws enacted may not be in tune with the administrative requirements. The gulf resulting from the Separation of Powers, has been bridged by the working of the committees. Members of the Cabinet may plead their point of view and provide necessary guidance and information to these committees. Sometimes, committees actively participate in the drafting of bills. The interest group also remain in close contact with the committees.

3. Selection.

Every newly elected House constitutes the committees in its very first session. There was a time when the members of the committees were nominated by the Speaker but at present, they are elected by the Congress. For this purpose, each House forms a committee known as Committee on Committees. In practice, the party caucus in each House decides about all such affairs, but outwardly this is done by

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the House itself. The Committee on Committees nominates members to different committees comprising both parties, each given representation according to its numerical strength. The most senior member of every committee is nominated as its chairman, provided he belongs to the majority party.

The selection of the members to different committees is made on seniority basis; their competence and experience is, however, also given due weightage in this context. Congressmen generally prefer to work in the committees that deal with such affairs as relate to their constitutency or vested intersts. The committees on agriclture, for example, consists mostly of Congreemen belonging to rural areas. Similarly, those elected from coastal areas, try to get membership of committees on fisheries or maritme affairs.

4. Powers.

Committees of American Congress play a very dominate role in legislation and are regarded as the mini legislatures. The real legislative business in each House is virtually carried on by its ten to twelve committees. Committees in the British Parliament are fully subordinate to the parent body and expected to report all the bills back that have been referred to them. But Congressional Committees are free from all such limitations. They are fully authorised to give reports on the bills or may not report at all. They may suggest alterations or add new proposals to the extent of changing the very spirit of a bill.

In the performance of their functions, the committees enjoy special powers and privileges. They may call for public official or adiministretive heads or any private individual for getting necessary information. They may hire the services of experts for seeking technical advice. The committees may visit to any place for the purpose of making any enquiry or getting first hand knowledge. After thorough examination of a bill, the committees submit report in different forms, which is paid due

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heed in the House during legislation.

5. Number of Committees.

According to Reorganisation of the Committees Act of 1946, the number of committees in the Senate is fifteen and twenty four in the House. Important committees in the Senate are on: agriculture, forest, finance, banking and currency, civil service, foreign affairs etc. Senate's Committees meet normally once a week or fortnightly. Appropriation Committee, however, meets on being convened by its Chairman. All committees have formed sub committees. Important committees in the House deal with such matters:agriculture, appropriations, defence personnels, education, labour etc.

6. KINDS OF COMMITTEES.

The following types of committees are formed in the Congress.

1) Standing Committees

Standing Committees are the most active and effective ones in both the Houses. Before the Reorganisation of Committees Act 1946, their number in the Senate was twenty six and forty eight in the House. But their total number was minimised under the new law. Standing Committees in the Congress, unlike their British counterparts deal with specific affairs. At present, the total number of these committees is 17 in Senate and 19 in the House.

2) Committee of the Whole House.

House of Representatives forms Committee of the Whole House to examine money bills and take action to this effect on the basis of the report of this committee. The presence of at least 100 members, constitute the Quorum of the House while Quorum of the House is 218. In the senate, the committee of the whole house is used only for examining matters relating to treaties and agreements. The main

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difference between the Committee of the Whole House and that of the session of the House lies in the rules of procedure. The rules observed in the committees are comparatively flexible and the members enjoy more freedom of expression. Moreover, the function of the committee is limited to the preparation of the report only while law-making power belonges to the House.

3) **Joint Committees**

Almost ten joint Committees, consisting of the members from both Houses work in the Congress. These consider such matters as are of equal interest to both Houses. In addition to these committees, the Congress constitutes, from time to time, different Boards and commissions. Joint committees deal with such matter as : printing, libraries, atomic energy, revenue, taxation, war heads etc. The other Joint Committees include, Joint Committee to examine Economic Report presented by the President; Joint Committee to consider immigration etc. It is worth pointing it out that a Joint Committee was constituted to work for the Reorganisation of the Congress. Joint Committees do not have sub-committees, nor their total strength is fixed. Any member of both the Houses may be nominated as its Chairman. The Congressional majority also gets majority of seats in a Joint Committee. At present, the number of such committees is four.

4) **Conference Committee.**

These are most important in the category of Joint Committees. When sharp differences arise in between both Houses, Conference Committee is formed, comprising few members from both the Houses. This committee tries to explore the points of agreement and work for a patch-up. The Speaker/Chairman of both Houses nominates the members whose numbers varies from 3 to 11, including the mover of the bill under consideration.

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5) **Select Committees**

Select Committees are formed from time to time, to consider specific matters. The members to these committees are nominated by the Speaker, representing both the parties. Their main function is to probe into a matter and submit report. Generally, those members are included in these committees who are interested in the matters under consideration. These committees are temporary and cease to exist after completion of their work.

7) **AMERICAN AND BRITISH COMMITTEES. A COMPARISON**

The committees of American Congress differ with their British counterparts in respect of organisation, functions and role. The following points in this context are noteworthy:-

1) The total number of committees of Congress is higher than that of the British Committees. Moreover, Standing Committees in the Congress, unlike their British counterparts, are devoted to specific affairs. The British Parliamentary Committees examine any bill referred by the Speaker.

2) Members of the British Standing Committes are appointed by Committee on Committees, whereas members of Congress committees are, in practice, selected by the respective party caucus.

3) The bills in the Congress are referred to the committees after their first reading, whereas in British Parliament, these are sent to the committees after second reading.

4) American Congressional committees enjoy extensive powers regarding the fate of a bill. They may alter it, propose new items or out rightly reject it. They are not bound to report a bill back to the House. But British Committees are not so domineering, as the Cabinet

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commands full control over the legislative process.

5) The meetings of Standing Committees in British Parliament are confidential, with the exception of the meetings devoted to examine private bills. Such meetings are open in which different parties may be asked to present their view point.

6) Chairmen of British Parliamentary Committees do not enjoy the same status or perform the same role as the one performed by the Charimen of Congressional Committees. The latter have assumed almost leadership role. A team of experts and a huge staff is at the disposal of American Committees and as such these are no more dependent on the administration for seeking technical advice whereas British Committees have to rely mostly on the administrative heads of the departments.

- **Write short notes on the following.**

(a) Caucus system.

(b) Gerrymandering.

(c) Floor Leader.

(d) Lobbying.

(e) Filibustering.

(a) The caucus system in the U.S.A.

A Caucus is a meeting of the members of a political party belonging to the Senate and the House of Representatives. All the members belonging to the political party are required to attend the meeting, unless they can show some valid reason for absence. At the beginning of every session, the Caucus elects its party leader, floor leader, whips, steering Committee and Party Committees on Congressional Committee. As could be expected, the Caucus of the majority party prepares a positive programme for the session, while the

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caucus of the minority party chalks out the line of action to be followed during the session. It decides which Bills are to be opposed and what attitude is to be adopted in the case of others. The members attending the Caucus meeting have full liberty to express their views but once the decision has been taken, they are bound to abide by the same, irrespective of their personal views on the subject. it is to be noted that the Caucus system is used more in the House of Representatives than in the Senate. It is true that previously the Caucus system of the Senate was also strong, but now the Caucuses in the Senate "have limited themselves to setting up party machinery and arranging Committee assignments, leaving the Senators free to divide themselves as they like on pending bills."

(b) Gerrymandering.

The practice of gerrymandering is a very old one. It took its name from Elbridge Gerry, Governor of Massachusetts, who sanctioned the partisan district-making in his State. John Fiske has given the following account of the incident: "In 1812 while Elbridge Gerry was Governor of Massachusetts, the Republican legislature distributed the districts in such a way that the shapes of the towns forming a single district in Essex County gave to the district a somewhat dragon-like contour. This was indicated upon a map of Massachusetts which Benjamin Russell, an ardent Federalist and editor of the Setinel, hung up over his desk in his office. The celebrated painter, Gilbert Stuart, coming into the office one day and observing the untouched figure, added with his pencil a head, wings, claws and exclaimed That will do for a salamanderl' 'Better say a Gerrymander growled the editor; and the outlandish name, thus duly coined, soon came into general currency."

The principle behind the gerrymander is a simple one. "In districting a State or City, separate the majorities of your own party over all or over as many districts as possible. Few have not enough vote to control every district, concentrate the

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strength of her opponents in as few districts as possible, so that it will do them the least good". Many laws have been passed to put an end to this practice, but the temptation has been so great that it has been difficult to resist it. Even the statutory requirement of 1929 that the States were to be divided into Congressional districts composed of contiguous and compact territories did not deter the legislative majorities from "mapping out shoe-string", "saddle bag" and "dumbbell' districts with a view to give the largest number of seats to the controlling party at the next elections. The Congress has also not intervened in these matters. The only restriction is that imposed by the force of public opinion and certain provisions in State Constitution. It is to be noted that popular sentiment has slowly and gradually grown against the gerrymander and gerrymandering has often proved a boomerang to the party resorting to it.

(c) Floor Leader.

The position of the floor leader in the House of Representatives is next to that of the Speaker. According to Professor Beard, "It is his duty to keep in close touch with the rank and file of his party colleagues, to learn their opinions, to understand their prejudices and ambitions, and whenever necessary to line them all up in support of some measure on which the party leaders have reached a decision. The floor leader is influential in determining who shall speak on bills, because by conference with party members he helps to make up the list of members whom the Speaker will recognise. In important meassures the majority leader will take counsel with the minority leader and reach an agreement as to when the vote shall be taken on them and who is to speak for the minority. In short, the floor leader has succeeded to many of the prerogatives formerly exercised by the Speaker; in terms of power he ranks next to the Speaker; and if he is clever in management he may hope to rise to the honour of presiding over the House. He is subject more or less to the direction of

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the 'steering committee' chosen by the caucus, i.e., by 'natural selection' for the purpose of exercising general supervisory power-an informal group of seven or eight persons who poerate quietly behind the scenes."

(d) Lobbying

The institution of lobbying has come into existence in the Congress on account of the absence of the leadership of the Cabinet in the Congress. There is no lobbying in England because the majority party in the House of Commons forms the ministry and the latter is responsible for initiating legislation and getting the same through. A large number of groups are formed in the U.S.A. for the purpose of advancing and proposing measures in which they are interested and their activity is called lobbying. Whenever a bill is placed before the Congress the conflicting interests pull in the opposite directions. Those who are likely to gain by the passage of the bill, advocate its adoption and those who are likely to be affected adversely, oppose it vehemently. Every kind of influence is exercised on the members of the Congress either for or against the bill. It is pointed out that a large number of the organisations in the U.S.A. are represented in the lobbies of the Congress and most important of them are the American Association of Railway Executives, the American Federation of Lobour, the National Petroleum Association, the American Farm Bureau Federation, the Chamber of Commerce of the United States, the American Legion, etc. Very clever agents are employed by them to achieve their objectives. Sometimes ex-Senators and ex-Congressmen are employed for this purpose. By means of letters, telegrams, telephonic calls, articles in the press, personal contacts and some times by means of bribery, they bring pressure on the members of the Congress. No student of American politics can deny that lobbying plays an important part in moulding the opinions of the members of the Congress.

The aim of lobbying is legitimeate and we cannot

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quarrel with it. Every one has the right to try to secure favourable legislation and prevent harmful legislation from coming on the Statute Book. However, an objection can be raised against the methods used to influence Congressmen if those methods go beyond talking or persuasion, the presentation of arguments, etc. Bribery and intimidation must not be tolerated, whether open or indirect. Lobbying may also be criticized on the ground that it gives some organizations too much influence in the making of laws which is out of proportion to their numbers or importance in the country. A group may represent only a small proportion of the population and only a small part of the economic life of the country and yet it may have a powerful lobby headed by a lobbyist of unusual ability, furnished with ample funds to maintain a large research staff. Another objectionable aspect of lobbying is the secrecy which surrounds it so far as the general public is concerned. Often the public is completely unaware that lobbying is going on or who is behind it. However the law requires that all lobbyists in Washington must register themselves, giving the name of the organisation which is employing them and the salary or fee paid for their services. This gives a considerable publicity to the general public concerning the activities of the lobbyists in Washington.

(e) Filibustering.

Filibustering tactics are those tactics which are employed to delay or prevent the passage of a bill which is not liked by the party opposing it. In a norrow sense, the practice of filibustering implies the misuse of the privilege of unrestricted freedom of debate with a view either to delay the passage of the bill or to prevent it from being passed. Filibustering tactics may be employed by an individual or a group of individuals. It is stated that in 1903, Senator Fillman started reading from Lord Byron's Childe Harold and declared he will continue to do so till such time as the provisions opposed by him were dropped from the bill under discussion.

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and he won his point.

"Near the end of the 64th Congress (March 1917) a small group of Senators filibustered to prevent the Senate from taking a vote on a bill to give the President authority to arm American merchant vessels for defensive purposes, notwithstanding the fact that nearly all the other Senators desired to pass the bill". In 1953, Senator Wayne Morse of Oregon talked for 22 hours and 26 minutes. On one occasion, Senator Smoot of Utah spoke all night without even leaving his desk. On another occasion, Senator Sheppard of Taxas spoke for 6 hours and 50 minutes while reviewing the work of the League of Nations, "and in that time he did not sit down, rest himself, nor even take a drink of water." In 1908, Senator robert La Follette of Wisconsin and other Senators took 30 hour to speak on a bill. The debate continued without interruption and La Follette alone spoke for 18 bours contitnuously.

President Woodrow Wilson says: "The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. A little group of wilful men, representing no opinion but their own, have rendered the great Government of the United States helpless and contemptible."

The number of filibusters is very large in the Senate. A check had been put on filibustering by law. It was provided that a debate in the senate could be brought to an end if a motion was put forward by 16 senators and approved by a two-thirds majority of the Senate.

In January 1959, a further change was made by the Senate by 72 votes against 22. The present position is that a filibuster can be stopped by a two-thirds majority of members actually attending a debate and voting, whereas previously it was necessary to secure a two-thirds majority of the total number of Senators to force an issue to a vote. The adopted proposal was put forward by Senator Johnson, a Democrat.

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The Southerners have so far successfully talked out bills aimed at guaranteeing voting and other civil rights for Negroes.

Although the practice of filibustering has been ridiculed and denounced from many quarters, it is maintained that in spite of the time consumed by the filibuster, the Senate manages to pass a large number of laws. It is also pointed out that by far the greater portion of the measures killed by filibustering are not favoured by the country and are never revived . moreover, the figures produced against filibustering come usually from those members of the Senate whose pet projects are defeated and who are always ready to plan and launch filibusters of their own.

Comparison of American Congress and British Parliament

It is true that who framed the Constitution of the United States were well-versed with the British Constitution and borrowed some of their institutions, but there are many differences in the legislatures of the two countries. The British Parliament is supreme. It can pass any law it pleases. It is no exaggeration to say that the British Parliament is sovereign. No law passed by British Parliament can be challenged in a court of law on the ground that it is ultra vires. The doctrine of judicial review does not apply in Great Britain. In the United States, the laws can be passed by the American Congress but those can be successfully challenged in the Supreme Court of America on the ground that those are ultra vires. The doctrine of judicial review applies with full force in the United States.

The British Parliament has complete control over the Cabinet. The Cabinet has to resign as soon as it loses the confidence of the House of Commons. The ministry can fall any day. It is rightly said that the ministers in England have to keep their hands on the pulse of the people. It is different in the United States. The American President is not responsible

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to the American Congress. He is elected for 4 years and instead of putting his hands on the pulse of the people, he looks to the calendar for 4 years because he knows that he cannot be dismissed out of office by the Congress. The executive in America is irremovable. The President may be unpopular but he cannot be dismissed. The American Congress is helpless in this matter.

The American Constitution is based on the principle of separation of powers. The American President is not a member of the Congress and does not sit in it. Both of them are independent of each other. The case is different in England where the members of Cabinet sit in the House of Commons and House of Lords and are liable to be questioned for what they do.

It is true that the members of the House of Commons are elected for 5 years but this does not mean that they can claim to sit for the full period. If the ministry is defeated in the House of Commons, the Prime Minister has the privilege to request the King to dissolve the House of Commons, and the convention is that the King will not refuse the request. That means that the members of the House of Commons can be asked to go home any time and they do not sit in the legislature for a fixed period. However, in the case of the United States, the members of the House of Representatives are elected for two years and they can sit for the full period. If the Congress cannot turn out the President, the President also cannot dissolve the House of Representatives. Both of them are elected for a fixed term and they work for the fixed period.

The members of the House of Lords in England are more than 700 and most of them are hereditary. The American Senate consists of only 100 members and all of them are elected directly by the people. The powers of the House of Lords have been very much curtailed by the Parliament Act of 1911 and this House has become in fact a secondary House. It has no control over the budget. It dare not oppose legislation

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on which the members of the House of Commons are adamant. However, in the United States the Senate has large powers. It is true that it is a second Chamber but it is not a secondary Chamber. The powers of the Senate are co-equal with those of the House of Representatives. No law can be passed if the Senate opposes it. The advice and consent of the Senate are necessary for appointments to be made by the American President. Unlike the House of Representatives or the House of Commons, the Senate can refuse to ratify a treaty entered into by the American President. It is well-known that the American Senate refused to ratify the treaty of Versailles, 1919 and thus the United States did not become a member of the League of Nations. It is true that the money bills are not initiated in the Senate, but the Senate can change them completely. No war can be declared by the American President without the consent of the Senate. The members of the Senate are elected for 6 years and many statesmen in America prefer to have a seat in the Senate than in the House of Representatives. That is not so with the House of Lords which does not count so much. In England, people prefer to fight for elections in the House of Commons because that is the way to further progress in life.

AMERICAN FEDERAL JUDICIARY.

Important Questions

- **Write a note on the American Supreme Court.**

(A 1995), (S 1997)

- **What are the general powers of the Supreme Court of America and discuss the proceedings of the Court?**

(A 1999)

- **Explain the jurisdiction of the US Supreme Court.**

(S 2001)

Ans. (1). Introduction.

The American judiciary occupies a very important

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position in the American political system. It is the third powerful organ of the government. Tourtellor has rightly commented that "unlike acts of the Congress, it is immune to Presidential votes and unlike Presidential votes it is immune to overriding by the congress." In the of words of Munro, "The development of the Supreme Court into a final arbitrator of constitutional disputes is one of America's most important contribution to the science of government."

(2). Two Separate Systems of Courts.

There are two separate systems of courts.

i) The Federal Courts; and

ii) The State Courts.

Under a unitary set up like that of Ceylon or France there is a single judicial organisation. Under a federal structure on the other hand, these are either two separate judicial system as in the United States or judiciary is placed under the jurisdiction of one of the government. The framers of the consititution in America had to decide what type of a system they wanted. If the entire judiciary was made a part of the national government, the states which were the basis of federal structure would have been ignored and they would not have allowed this to happen. If the court system was to be the concern of the states, there was likelihood of friction. The founding fathers had the experience of the confederation and recognised the danger of absence of federal judiciary.

Article 111 of the consitution has provided for a national judiciary. The division of powers between the centre and the states made it essential to set up a machinery of sorting out the differences between the two. The job could be entrusted to no one except the federal judiciary "Federalism by its very nature" says Munro "implies division of authority between the nation and the states with the certainty that the disputes concerning the range of their respective powers will arise". The wisdom of the framers is demonstrated by the way

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in which this court of last resort has guided American constitutional progress. The Supreme Court has become final arbitor of constitutional disputes. It is the third branch of national government. It has been described as the "third Chamber" of the Congress because of its power of judicial review it can declare any law passed by the Congress as void. It is continuous constitutional convention because it has been constantly giving new meaning and reading new provisions in the constitution. The Supreme Court is the interpreter and guardian of the constitution. The Supreme Court protects fundamental rights of the people, rights of the federal government and powers of the states.

(3). Legislative Courts.

Apart from the courts created under the Constitutional law, the Congress has created such courts whose organisation, procedure and Jurisdiction has also been determined under statutes. These courts do not exercise Judicial powers of the federal government rather they assist in the interpretations and application of the laws of the Congress. For instance, Congress established Custom Courts. In this category, are included all courts created by the Congress for the application of its laws. These are following:-

(a) **Court of Claim**

This court was created in 1885, comprising one Chief Judge and five other Judges. It hears all petitions against the government, viz., all petitions involving claims emanating from the matters relating to Constitutional law, federal laws and treaty obligations of the federal government. The claims against the government may be of different types. For example, disputes arising out of non payment of salaries or relating to property acquired by government for welfare purpose; or all damages claimed against the federal government by private persons. This court was once regarded as part of the legislative courts but was included in 1953, in the category of Constitutional Courts by the Congress.

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(b) **Courts of Customs**

This court was created in 1890, and its seat is in Washington. It was also raised to the status of Constitutional Court by the Congress in 1956. It consists of nine Judges and has the Jurisdiction to settle all disputes relating to customs.

(c) **The Court of Customs And Patent Appeals**

This court was established in 1910 and it comprises five Judges. It has appellate Jurisdiction against the decisions of Custom Court and the orders of Patent Commissioners.

(d) **Court of Military Appeals**

This Court is considered to be the last court of appeal for all court-martial cases.

(3). ORGANISATION OF FEDERAL COURTS

The Constitution mentions only the Supreme Court while the task of the formation of federal courts has been assigned to the Congress. The structure of federal courts signifies a heirarchial system starting with District Courts at the bottom and the Supreme Court at the top. The cases can be taken on appeal against the decisions of the lower courts to the higher courts. The organisation and jurisdiction of the federal courts is given below:-

1) **District Courts.**

To make the administration of Justice within the reach of a common man, Districts Courts have been created. Whole country has been divided in 94 districts and a District Court established in each. These courts hold their sessions in different cities and towns in addition to permanent seats in big cities. The number of Judges in such courts has not been fixed but determined according to the actual needs. The Judges are appointed by the President with the concurrence of Senate and they retire at the age of seventy. At present, the total number of District Court Judges is about 515.

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2) **Circuit courts**

Circuit courts were created in 1891, for the purpose of sharing the burden of work of the Supreme Court in respect of appellate jurisdiction. The total number of Circuit Courts is twelve while a specific is meant for District of Columbia. The number of Judges varies from 3 to 10 in such courts. These courts hear appeals against the decisions of District Courts. Each Circuit Court includes a Judge of the Supreme Court as well. All such cases involving the interpretations of any clause of the constitution can also be taken directly to the Supreme Court. Circuit Courts hear appeals against Judicial decisions of different administrative agencies including Tax Court and National Labour Relation Board.

(4). JURISDICTION OF THE FEDERAL COURTS

(a). Original Jurisdiction.

The Jurisdiction of the Federal Courts extends to all cases involving matters and those involving parties. In the latter cases, the state courts have also concurrent jurisdiction. The Congress can, however, determine the exclusive jurisdiction of the federal courts through enactment. A matter can be taken on appeal in the federal courts against the decisions of state courts in all cases on which both, federal as well state courts, have concurrent jurisdiction.

First type of cases involving matters, relating to the explanation and interpretation of the Constitutional laws of the Congress and treaty obligations. As federal judiciary is the guardian of the Constitution and that of the rights of the citizens any enactment or administrative order that violates it, shall be decided by the federal courts. Second types of cases extend to all disputes involving public Ministers and councils etc. The third category of cases relate to admiralty and maritime jurisdiction viz. the crimes or offences committed in the American ships, either in the territorial waters or in the open sea. Such cases also involve crimes committed in all

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ships even of other countries in American territorial waters. The major reason for assignment of such cases to the federal courts lies in the fact that these relate to foreign trade, a matter that falls in the federal list. All prize cases are also tried in the federal courts.

The fourth type of cases over which federal courts have jurisdiction, extend to all controversies :

(a) Between the federal government and the state governments.

(b) Or in which two or more states are parties against the federal government.

(c) Or the citizens of one state are litigants against the citizens of another state.

All cases involving the basic rights of citizens, can be tried not only in Supreme Court but also in subordinate federal courts. It is to be noted that federal courts try both civil and criminal cases.

(b). Exclusive and Concurrent Jurisdiction

The federal as well as state courts, both have jurisdiction, as explained earlier, over concurrent affairs but the Congress can determine exclusive Jurisdiction of federal courts in certain affairs. Congress has decided exclusive jurisdiction of the federal courts on these affairs:

1) All disputes in which the federal and state governments are parties or the controversies among the federating units.

2) All controversies relating to ambassadors, public ministers etc.

3) All cases relating to admiralty and maritime jurrisdiction, copy rights, bankruptcy, patent rights or relating to Constitutional and other federal laws.

State courts have concurrent jurisdiction on all other

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matters.

SUPREME COURT OF U.S.A.

- **What do you understand by the British constitutional conventions? Discuss the important conventions of the British constitution (A 1998)(1996)**
- **What is the meanings of expression "conventions of constitution" and discuss the role they play in England. (A 1998)**
- **What is position of conventions in English constitution Discuss. (S.2000) (A2001)**

Ans. Introduction.

The need of strong judiciary is inherent in a federal government. The framers of the US constitution with the experience of confederation benind them devised a strong judiciary having coordinate powers with the executive and the legislature. The Supreme Court of the US is not only at the apex of the national judicial hierarchy but also in effect the highest court of each state system for what are known as federal questions involving some right or immunity claimed under the federal constitution, federal laws or federal treaties. This has allowed the Supreme Court an opportunity to keep shape and the frame work of the state justice also frame work of state justice also.

1) **Selection of Judges.**

The Judges of the Supreme Court and other federal courts are appointed by the President with the approval of the Senate. Judges of the Supreme Court have been known politically to be Democratic or Republicans; their judgements have also been influenced by their party ideology. But they have never had active party affiliation after appointment on the Court.

2) **Position of the Chief Justice.**

Although the chief justice receive a higher annual

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salary ($ 62,500) than other justices who receive $60,00, the chief justice has in reality no more legal weight or influence in deciding cases than any of the justices. He is simply the presiding judge at sessions of the court and performs a number of administrative functions.

3) How does the Court Transact a Business?

Regular sessions of the Supreme Court begin on the first Monday in October and usually end by the middle of the following June. It meets every week days except Saturdays. Six judges constitute a quorum. Its decesions to be binding must be reached by a majority of those constituting a bench. If the justices are evenly divided, a rehearing may be ordered.

4) Decisions and Opinions.

On Saturday of each week, the justices confer upon the cases which have been heard. They discuss the facts and arguments advanced on both sides and reach a decision by a majority of votes. The chief justice then designates one of the associates to write the courts opinion in full. Then the Second Conference takes place to discuss the same and changes are made if necessary. The opinion is made public. The judges who differ may write dissenting opinion. All these opinions are made public.

5) How cases may come before the Supreme Court?

Cases may be brought before the Supreme Court in either of two ways by original suit or by appeal. The constitution confers on the court only original jurisdiction and appellate jurisdiction has been conferred by acts of Congress.

6) Jurisdiction of the Supreme Court.

Judicial power of the court extends to all the cases in law and equity arising under the US constitution, the laws of the United States and treaties made under their authority. The jurisdiction also extends to all cases affecting ambassadors or other public ministers and consels, to all cases of admirality

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and maritime jurisdiction. The Supreme Court has jurisdiction over all controversies to which the United States is a party, to controversies between two or more states or citizens of different states and between a state or citizens thereof and foreign states.

1) **Original Jurisdiction**

In the original juirsdiction of the Supreme Court that is, authority to hear cases in the first instance is limited by the constitution to cases involving ambassadors and other diplomatic agents and cases to which the union and a state or states are parties. The Supreme Court has original jurisdiction in such cases also where the validity of any national or state law is questioned. Where such cases come before the Supreme Cuort, they are no doubt of great significance but they arise infriquently and form a small part of the business of the court.

2) **Appellate Jurisdiction**

The appellate jurisdiction of the Supreme Court is by far the largest part of its functions. This is made up of cases appealed from the lower federal courts and from the state courts. The appellate jurisdiction of the Supreme Court has been determined by the Acts of the Congress. The specific cases in which an appeal lies with the Supreme Court are far too limited. The discretionery appellate jurisdiction of the Supreme Court is vast. In fact, there is a striking tendency on the part of the Congress to diminish the obligation of the court to hear specific kinds of cases and to widen its discretionary authority.

3) **Judicial Power to Punish for Contempt**

The federal courts in common with courts in general have the power to punish persons for contempt. In the USA criticism of judicial policies and decisions outside the court room does not come in the definition of contempt. The Supreme Court accepts this view and has greatly curtalied the powers of lower courts to punish critics or contempt.

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4) **The Supreme Court is guardian of the Constitutional system**

The US Supreme Court has the power of judicial review and by exercising this power of judicial review the court acts as the guardian of the constitution and protector of the rights of individuals.

5) **The Supreme Court and the Judicial review**

The most important and distinctive funtion of the Supreme Court is its power to pass final judgement upon the constitutionality of federal and state Acts and of executive action also. It is absolutey true that the constitution does not provide expressly this power but Chief Justice Marshall in the Marbury Vs Madison case 1803 made a categorical announcement that "the Supreme Court does possess the power of declaring the federal laws null and void if they come into conflict with the provisions of the constitution". Inspite of Jefforson's protests, Chief Justice Marshall declared invalid a nember of Acts passed by the state legislation as they violated the provisions of the constitution.

During the last 20 years the Supreme Court in USA has engaged itself more and more in the protection of rights and liberties of the people not only in relation to property but also in relation to life and liberty as guaranteed under the provisions of the constitution while the Bill of Rights contains limitations and restrictions upon the Federal Government, the 14th and 15th amendments of the constitution provide federal judicial state protection for the citizens against the state governments. The states are forbidden to abridge the privileges of immunities to citizens of United States, not shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person with its jurisdiction the equal protection of laws. Even the right to vote can not be denied or abridged on account of race, colour or previous condition of servitude.

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UP-TO-DATE PAPERS

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *1996-Annual* *Max Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1 What are the main sources of the British Constitution?

Q.2. What do you understand by the British Constitutional conventions? Discuss the important conventions of the British Constitution.

Q.3. Discuss the composition and role of the House of Lords.

Q.4. What are the main functions of the British Parliament?

Q.5. Discuss the role of monarchy in Britain.

Q.6 Write notes on the following :
(a) Common Wealth, (b) Bill of Rights (c) Privy Council.

PART – II

Q.7. What are the main features of the American Constitution?

Q.8. Discuss the theory of Checks and Balances of the American Constitution.

Q.9. Write a comprehensive note on Federal System in U.S.A.

Q.10. Write a note on the American Supreme Court.

Q.11 Discuss the role of Senate in American System.

Q.12. What is Due Process of Law? Explain.

L.L.B PART I [PAPER-3]

Time Allowed 3 Hrs *1997-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.

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All questions carry equal marks.

PART - I

Q.1. Describe the salient features of the British Constitution.

Q.2. Discuss the doctrine of Supremacy of the Parliament under the British Constitution.

Q.3. Discuss the prerogatives of the Crown.

Q.4. British Constitution is an unwritten Constitution. Discuss.

Q.5. What do you understand by ministerial responsibility?

Q.6. Discuss the Rule of Law in its present context.

PART – II

Q.7. Discuss the composition and functions of the American Congress.

Q.8. The American Constitution provides a presidential system of Government. Discuss.

Q.9. What do you understand by the doctrine of Judicial Review?

Q.10. Discuss the Bill of Rights under the American Constitution.

Q.11. The American Constitution is based on the doctrine of Separation of Powers. Discuss.

Q.12. Briefly describe the Constitutional history of USA.

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *1997- Supplementary* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.

All questions carry equal marks.

PART - I

Q.1. What are the salient features of the British Constitution?

Q.2. Give the composition of the British Parliament.

Q.3. What is the procedure of Law making under the British Constitution?

Q.4. What do you understand by the conventions of the

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Constitution? Discuss the important conventions.

Q.5. Write a comprehensive note on the British Prime Minister.

Q.6. Write notes on TWO of the following:

(a) Bill of Rights
(b) Martial Law.
(c) Judicial Committee of the Privy Council.

PART – II

Q.7. What do you understand by the separation of powers, Discuss with reference to the American Constitution.

Q.8. How the American President is elected? What are his powers?

Q.9. Give the composition of the American Congress.

Q.10. What do you understand by Equal Protection of Law under the American Constitution?

Q.11. What is the position of the States in the American Federation?

Q.12. Write notes on TWO of the following:

(a) Speaker of the House of Representatives.
(b) Marbury and Madison.
(c) Impeachement.

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *1998-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.

All questions carry equal marks.

PART - I

Q.1. British Constitution is an unwritten Constitution. Explain.

Q.2. Explain the doctrine of ministerial responsibility under British Constitution.

Q.3. What do you understand by Conventions of the British constitution.

Q.4. Write a comprehensive note on the Committees of the House of commons.

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Q.5. Discuss the supremacy of the British parliament.
Q.6. Write notes on TWO of the following :
(a) Petition of Rights
(b) Public Accounts Committee
(c) Lord Chancellor.

PART – II

Q.7. How the American Constitution has been developed during the last two centuries (1787-1987)?
Q.8. Explain the powers of the Congress in U.S.A.
Q.9. What do you understand by Due Process of Law in U.S.A.?
Q.10. Discuss the Presidential System under the U.S. Constitution.
Q.11. Explain the theory of Judicial Review in U.S.A.
Q.12. Write notes on TWO of the following:
(a) McCulloh Vs Mary Land.
(b) Vice – President.
(c) Powers of American States

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *1998- Supplementary* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. Give the sources of the British Constitution.
Q.2. Explain the position of the Prime Minister of Britain.
Q.3. Discuss the powers of the British Parliament.
Q.4. Discuss the prerogatives of the Crown. How these are exercised?
Q.5. Write a comprehensive note on House of Lords.
Q.6. Write notes on Two of the followings:
(a) Bill of Rights
(b) Speaker
(c) Leader of Opposition

PART - II

Q.7. Explain the main features of the American

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Constitution.

Q.8. Discuss the theory of Separation of Powers under the U.S. Constitution.

Q.9. What are the powers of Federal Government in U.S.A.? Explain.

Q.10. Write a comprehensive note on American Supreme Court.

Q.11. Explain the rights available under the First Amendment of U.S. Constitution.

Q.12. Write notes on TWO of the followings:

(a) Marburry Vs. Medison
(b) House of Representatives
(c) Interstate Commerce

L.L.B PART I |PAPER-3|

Time Allowed : 3 Hrs *1999-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.

All questions carry equal marks.

PART - I

Q.1. What are the sources of Constitutional Law in England?

Q.2. Discuss the principle of sovereignty of Parliament and limitations, if any, upon the exercise of such sovereignty in England?

Q.3. Explain the judicial functions of British Parliament.

Q.4. Discuss fully the "Ministerial Responsibility" under British Constitutional System?

Q.5. What is the meanings of expression "Conventions of Constitution" and discuss the role they play in England.

Q.6. What is the concept of rights of citizens in England in the absence of written Constitution there? How the rights of Englishmen are enforced? Discuss.

PART - II

Q.7. What fundamental rights are guaranteed in Federal Constitution of America?

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Q.8. Explain U.S.A. executive, and how President is elected in America?

Q.9. What is composition and function of house of representative in America?

Q.10. Discuss different powers available to Speaker of House of Representative in U.S.A. and discuss the procedure of his election?

Q.11. Explain the different powers available to Congress in America?

Q.12. Write notes on any Two of the following:

(a) Political parties in U.S.A.

(b) Power of Veto

(c) Standing Committee of Congress

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *1999- Supplementary* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.

All questions carry equal marks.

PART - I

Q.1. Discuss the salient features of the British Constitution.

Q.2. Write a note on different prerogatives available to Crown in England.

Q.3. What are different powers available to Prime Minister of England?

Q.4. What do you mean by the term "Rule of Law"? Discuss its significance under the British Constitutional System.

Q.5. What do you understand by "House of Commons"? Explain different privileges available to members of House of Commons.

Q.6. What is the theory of "Separation of Powers" and to what extent it is embodied in the British Constitution?

PART - II

Q.7. What are the characteristics of the American Constitution?

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Q.8. Explain different powers available to the American President?

Q.9. How the Cabinet in the U.S.A. is constituted and also explain its powers?

Q.10. Discuss the tenure, selection, and duties of the Senate of U.S.A.

Q.11. What do you mean by Committee System in the U.S.A. congress and how does it differ from Committee System in England?

Q.12. What are the general powers of the Supreme Court of America and discuss the proceedings of the Court?

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *2000-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. How far it is correct to state that English Constitution is unwritten. Discuss in detail.

Q.2. Discuss fully the sources of English Constitutional Law.

Q.3. What is composition of English Cabinet? How does it differ from Privy Council.

Q.4. What is the procedure of legislation under the British Constitution?

Q.5. What do you understand the Rule of Law and whether there are some exceptions to it under British System.

Q.6. Briefly discuss the Judicial System of England.

PART - II

Q.7. Discuss the organisation of Senate under the U.S.A. Constitution.

Q.8. What are the executive powers of the U.S.A. President? Discuss the procedure of his removal.

Q.9. Discuss the Judicial Review power of the Supreme Court of America.

Q.10. What are the powers and functions of the House of

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Representatives in U.S.A.?

Q.11. Write short notes on:
(a) Vice President of U.S.A.
(b) Separation of Power under the U.S.A. Constitution.

Q.12. What do you mean by "Bill of Committee" and "Bills on Calendar"? How are the Bills on Calendar disposed of?

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs. 2000- Supplementary Max. Marks : 100

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. The English Constitution is the part of common law. Discuss.

Q.2. Discuss the composition and legislate power of House of Lords?

Q.3. What is the difference between flexible constitution and rigid constitution, also give their merits and demerits.

Q.4. What are different privileges available to Crown?

Q.5. Outlives the various steps of law making in England?

Q.6. What may be the different sources of British Constitution?

PART - II

Q.7. The American Constitution is the most rigid Constitution of the world?

Q.8. Discuss the privileges and immunities available to the Congress men?

Q.9. What are the legislate powers of the President of U.S.A.

Q.10. Describe the procedure of impeachment under the U.S.A. Constitution.

Q.11. Briefly describe the salient feature of U.S.A. Constitution.

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Q.12. What do you mean by "due process of law". How this principles plays an effective role in enforcement of rights guaranteed by U.S.A. Constitution.

L.L.B PART I |PAPER-3|

Time Allowed : 3 Hrs *2001-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. What is difference between written and unwritten Constitution? Explain with examples.

Q.2. What is position of conventions in English Constitution? Discuss.

Q.3. What do you mean by Parliamentary sovereignty? How this concept is applied in British Constitution?

Q.4. Explain the committee system of England Parliament.

Q.5. Explain the judicial system of England.

Q.6. What are duties and privileges of Crown in Britain.

PART - II

Q.7. What are salient features of American Constitution.

Q.8. Discuss the President of U.S.A. as chief of administration, what are his powers appointment and removed.

Q.9. Describe in detail the legislative procedure of the Senate.

Q.10. What short notes on:
(a) Speaker of house of representative in U.S.A.
(b) Pocket Veto.

Q.11. Write a comprehensive note on the fundamental rights and the American Constitution.

Q.12. Discuss the doctrine of separation of power, between the states and the Federal Government in the U.S.A.

L.L.B PART I |PAPER-3|

Time Allowed : 3 Hrs *2001- Supplementary* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE

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questions from each PART.
All questions carry equal marks.

PART - I

Q.1. Explain the salient features of the British constitution.
Q.2. Explain rule of law under the British constitution.
Q.3. Discuss the supremacy of the British Parliament.
Q.4. Explain the Cabinet System under the British constitution.
Q.5. Discuss the role of conventions in the development of the British constitution.
Q.6. Evaluate the role of Queen/King under the British constitution.

PART - II

Q.7. Outline the development of the U.S. constitution.
Q.8. Explain the system of "Checks and Balances" under the U.S. constitution.
Q.9. Discuss the role of President of Untied States. Also compare it with the British Prime Minister.
Q.10. Enumerate the powers of Congress under the U.S. constitution.
Q.11. Explain the Bill of rights of the U.S. constitution.
Q.12. Explain the case of Marbury Vs Madison.

L.L.B PART I |PAPER-3|

Time Allowed : 3 Hrs *2002-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. Explain the sources of the British Constitution.
Q.2. Discuss the parliamentary procedure for law making under the British Constitution
Q.3. What do you understand by Responsible Government?
Q.4. Explain the Important conventions of the British Constitutions.
Q.5. What do you understand by the Royal Prerogative?

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Explain.

Q.6. Write notes on the following:
(a) Habeas Corpus
(b) Lord Chancellor

PART - II

Q.7. Discuss the salient features of the U.S. Constitution.

Q.8. Write a comprehensive note on separation of powers with particular reference to the U.S. Constitution.

Q.9. Explain the system of election of American President.

Q.10. Discuss the composition, powers and role of Senate under the U.S. Constitution.

Q.11. Discuss the due process of law under U.S. Constitution.

Q.12. Explain the jurisdiction of the U.S. Supreme Court.

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *2002- Supplementary* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. Discuss in detail the sources of the British constitution.

Q.2. Write short notes on:
(a) Lord chancellor
(b) Cabinet System

Q.3. Briefly discuss the judicial functions of the British parliament.

Q.4. Explain with examples the importance of 'conventions' under the British constitution.

Q.5. House of commons is more powerful than House of Lords. Explain

Q.6. State the nature and functions of the cabinet in England.

PART - II

Q.7. Discuss the theory of separation of powers and its role in the US constitution.

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Q.8. Discuss in detail the emergency powers of the American President.

Q.9. What four freedoms are the most crucial in the US constitution? Explain.

Q.10. Briefly describe the salient features of the US constitution.

Q.11. American senate is the most powerful chamber on earth. Explain.

Q.12. Discuss the procedure of legislation under the US constitution.

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *2003-Annual* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. Discuss in detail the salient features of the British Constitution.

Q.2. Discuss the role and importance of conventions of the Constitution in England.

Q.3. The phrase 'the King can do no wrong' is taken differently now than in 'the past'. Explain.

Q.4. Discuss in detail the sources of the British Constitution.

Q.5. Write short notes on:
(a) Act of settlement
(b) Bill of Rights

Q.6. Discuss the functions of the two houses of Parliament and their relationship with each other.

PART - II

Q.7. Briefly discuss the system of election of President in America.

Q.8. Discuss in role of Supreme Court in protecting civil liberates in the U.S.

Q.9. U.S Senate is unique in many respects. Explain.

Q.10. Discuss in detail 'emergency powers' of the

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American President.

Q.11. Discuss the Concept of Federalism under the U.S. constitution.

Q.12 Explain the system of checks and balances under the U.S. Constitution.

L.L.B PART I [PAPER-3]

Time Allowed : 3 Hrs *2003-Supplementary* *Max. Marks : 100*

Attempt any SIX questions in all, including THREE questions from each PART.
All questions carry equal marks.

PART - I

Q.1. Discuss the sources of the British Constitution in detail.

Q.2. How for the phrase 'The King Can Do No Wrong' holds good today?

Q.3. Write short notes on:
(1) Lord Chancellor (2) Bill of Rights
(3) Petition of Right

Q.4. Explain the doctrine of ministerial responsibility under the British Constitution.

Q.5. Discuss 'Independence' of judiciary in England.

Q.6. Highlight the salient features of the British Constitution in detail.

PART - II

Q.7. Discuss the role of the Supreme Court in protecting civil liberties in the U.S.

Q.8. Write a detailed note on emergency powers of the American Constitution.

Q.9 Discuss the Presidential system of Government in the U.S

Q.10 Write an essay on 'separation of powers' under the American Constitution.

Q.11 American Constitution is very rigid. Explain.

Q.12 Discuss in detail the practice of judicial review in the U.S.

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